

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 281/Del/2020
(Assessment Year : 2014-15)

Paramasivam Mahalingam No.1, Santosh Nagar, Pratap Vihar, New Delhi Ghaziabad – 201 009 PAN : AACPM 7813 R (Appellant)	Vs.	ACIT Central Circle – 6 New Delhi (Respondent)
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Assessee by	Shri Suresh Gupta, C.A.
Respondent by	Ms. Anu Krishna Agarwal, CIT-D.R.

Date of Hearing	18.12.2024
Date of Pronouncement	17.01.2025

ORDER

PER VIMAL KUMAR, JM:

1. The appeal filed by assessee is against the order dated 14.10.2019 of Learned Commissioner of Income Tax (Appeals)-24, New Delhi [hereinafter referred to as 'Ld. CIT(A)'] arising out of assessment order dated 22.03.2016 by the Assessing Officer, ACIT, Central Circle – 06, New Delhi (hereinafter referred as 'Ld. AO') under section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] for the Assessment Year 2014-15.

2. Brief facts of case are that search and seizure operation under section 132 of the Act was carried out on Santosh/Km/VMI Group

and its promoters by the Investigation Wing, New Delhi on 27.06.2013. Notice under section 143(2) of the Act was issued on 29.07.2015. In compliance of notice under section 143(2), the assessee furnished copy of return filed under section 139 of the Act declaring income of Rs.68,54,560/- on 01.09.2015. Notices under section 143(2) of the Act were issued on 01.09.2015 & 03.09.2015. Notice under section 142(1) of the Act along with questionnaire was issued on 25.05.2015. Shri V. K. Sabharwal, Adv., Authorized Representative of the assessee attended proceedings and filed details. On completion of assessment proceedings, the learned AO vide order dated 22.03.2016 made addition of Rs.3,39,78,354/- as unexplained cash credit under section 68 of the Act.

3. Appellant/assessee preferred appeal before the learned CIT(A), which was dismissed vide order dated 14.10.2019.

4. Being aggrieved, appellant/assessee preferred present appeal.

5. At the time of hearing, in continuation of application of admission of additional ground of appeal, ground no.3 was taken, which is read as under:

"The impugned assessment is invalid in law as the same has been passed after taking approval u/s 153D of the Act granted without application of mind by the Joint Commissioner of Income Tax through a common communication dated 22.03.2016 vide F.No. Jt.CIT(CR)-II/2014-15/2073 for various AY's i.e. AY 2008-09 to AY 2014-15 in the appellant's case and the simultaneous approval granted in 21 cases of the appellant's group on the same date"

6. On 10.10.2024 following order was made:

“Revenue is directed to place on record the approval papers u/s 153(D) of the Act before completion of assessment. Adjourned to 18.12.2024”

7. At the time of hearing, learned Authorized Representative for the appellant/assessee submitted a request letter F. No. DCIT/CC-06/RTI/P. Mahalingam/2024-25/1360 dated 14.11.2024 regarding request for information under RTI Act, 2005, mentioning as under:

“2. In this regard, the point wise reply of RTI application is as under:

<i>Sr. No.</i>	<i>Information sought</i>	<i>Reply</i>
<i>a.</i>	<i>Copy of approval u/s 153D of JCIT along with satisfaction note</i>	<i>The requisite documents is being traced as the record is approximately 8 years old.</i>
<i>b.</i>	<i>Copy of draft order sent to JCIT for approval</i>	<i>This information cannot be provided as this matter pertains to the part of internal communication.</i>
<i>c.</i>	<i>Copy of order received from office of JCIT after approval</i>	<i>The requisite documents is being traced as the record is approximately 8 years old.</i>
<i>d.</i>	<i>Copy of records sent to JCIT for taking approval with draft order.</i>	<i>This information cannot be provided as this matter pertains to the part of internal communication.”</i>

8. Learned Authorized Representative for the assessee/appellant submitted that since copy of approval under section 153D of the Act is not available with the Department a presumption be drawn that no such order was passed. Reference to judgment of Hon’ble High Court of Delhi in the case of Rajsheela Growth Fund (P) Ltd. vs. ITO

ITA No.124/2020 and other judgment dated 08.05.2024 was made. Reliance was placed on order dated 30.05.2024 in ITA No.825/Del/2018 titled as M/s. Emaar MGF Land Ltd. vs. ACIT of Co-ordinate Bench of ITAT Delhi.

9. Learned Departmental Representative for the Department of Revenue submitted that the approval was granted under section 153D of the Act. However, the same is being traced.

10. From examination of record in light of aforesaid rival contentions, it is crystal clear that despite direction dated 10.10.2024, the Department of Revenue is failed to place on record approval papers under section 153D of the Act regarding the assessment order. As per letter dated 14.11.2024, the copy of approval under section 153D of the Act along with satisfaction note is being traced as it is approximately 8 years old.

11. According to ratio of judgment in the case of Rajsheela Growth Fund (P) Ltd. (supra), it is well settled that a prior approval of competent authority under section 153D of the Act is mandatory and same is required to pass rigor of the law, to show that the approval was granted after due consideration of the assessment record and it was not a mechanical approval.

12. Identical facts arose in ITA No.825/Del/2018 titled as M/s. Emaar MGF Land Ltd. vs. ACIT wherein a Co-ordinate Bench in order dated 30.05.2024 held as under:

“7. We have given thoughtful consideration to the aforesaid facts and circumstances and are of the considered view that it is now settled proposition of law that prior approval of competent authority under section 153D of the Act is mandatory and same is required to pass rigor of the law, to show that the approval was granted after due consideration of the assessment record and it was not a mechanical approval. In spite of giving reasonable and sufficient opportunities to the department AO has failed to produce any copy or other evidence of existence of the approval. That only gives rise to a presumption that there was no approval at all. In the absence of same no conclusion can be drawn as to if the approval was in accordance with law or not but to hold that the assessments in hand were concluded without the requisite approval u/s 153D of the Act.

8. Thus we are inclined to allow this additional ground no. 5, but with a caveat that, in case department is able to lay hand on any evidence showing existence and content of approval, application may be filed for recalling the this order and to contest this issue afresh on merits along with other issues raised in respective appeals.”

13. In view of above material fact of non-production of copy or other evidence of existence of approval and well settled principle of law, the additional ground no.3 is allowed.

14. In the result, appeal filed by the assessee is allowed.

Order pronounced on this day 17th January, 2025

**Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

**Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER**

Dated: 17.01.2025

*Priti Yadav, Sr. PS**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI