



IN THE INCOME TAX APPELLATE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER  
AND  
SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.117 to 123/GTY/2018  
निर्धारण वर्ष / Assessment Years : 2008-09 to 2014-15

DCIT, Circle Agartala	<b>Vs.</b>	Rajarshi Motors Pvt. Ltd., A.A. Road, Chandrapur, Agartala, Tripura PAN : AACCR8033P
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.180 to 186/GTY/2018  
निर्धारण वर्ष / Assessment Years : 2008-09 to 2014-15

Rajarshi Motors Pvt. Ltd., A.A. Road, Chandrapur, Agartala, Tripura PAN : AACCR8033P	<b>Vs.</b>	ACIT, Circle Agartala
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

Cross Objection Nos. 32 to 38/GTY/2018  
(Arising out of ITA Nos.117 to 123/GTY/2018]

निर्धारण वर्ष / Assessment Years : 2008-09 to 2014-15

Rajarshi Motors Pvt. Ltd., A.A. Road, Chandrapur, Agartala, Tripura PAN : AACCR8033P	<b>Vs.</b>	DCIT, Circle Agartala
Cross Objector		Appellant in the appeals

Assessee by:	Shri Sanjay Mody, FCA
Department by:	Shri Kaushik Ray, JCIT
Date of hearing:	25.11.2024
Date of Pronouncement:	06.02.2025

**आदेश / ORDER**

**PER BENCH :**

The captioned cross appeals pertaining to Assessment Years 2008-09 to 2014-15 are directed against the different orders dated 21.03.2018 passed by CIT(A), Shillong which in turn are



arising out of respective Assessment Orders passed u/s.153A of the Act.

2. Since the issues raised by Revenue and cross objections by the assessee are common for all the years under appeal, we proceed to dispose of these appeals by way of this consolidated order for the sake of convenience.

3. Briefly stated, the facts of the case are that the assessee is a company registered in Agartala and is engaged in the business of dealership of Motor Cars which is part of Swapan Paul Group. The assessee filed the return of income for the A.Y. 2008-09 on 26.09.2014 disclosing total income of Rs.19,89,300/-. Search and seizure operations were carried out u/s.132 of the Act at the office premises of Rajarshi Motors Pvt. Ltd. on 23.08.2013 wherein Profit and Loss account in Tally Software was found and seized. The Assessing Officer noticed that net profit appearing in the seized document was far in excess of what was disclosed in Audited Accounts. Notice u/s.153A of the Act was served requiring the assessee company to furnish its return of income for the A.Y. 2008-09. The assessee company filed the return of income on 26.09.2014 disclosing the same income as that of original return of income. In the said operation, Mr. Swapan Kumar Paul, MD and key person of Rajarshi Motors Pvt. Ltd. group in his statement u/s.132(4) disclosed an amount of Rs.19,55,75,000/- which includes an amount of Rs.95,00,000/- in the hands of Rajarshi Motors Ltd. but did not reflect the income in its return of income filed u/s.153A of the Act. Thereafter, the assessee company was served with statutory notices u/s.143(2)/142(1) of the Act but there was no proper compliance. In the event, the AO made certain additions. Since the finding of the AO is almost similar for all the assessment



years under consideration except for change of figures, we take note of the finding of the AO for A.Y. 2008-09 which is reproduced below :

**“ASSESSMENT ORDER**

1. The assessee is a company registered in Agartala, engaged in business of dealership of motor cars and is part of Swapan Paul Group. A search and seizure operation u/s 132 was conducted on 23-08-2013 in the Office premises of Rajarshi Motors Pvt. Ltd. and warrant was executed on Rajarshi Motors Pvt. Ltd. Consequently, notice u/s. 153A was issued and served upon the assessee on 17-03-2014 where the assessee was directed to submit its return of income for the Asst. Year 2008-09 by 16-04-2014, but there was no compliance from the assessee.

2. The assessee on 29-09-2008 had filed the original Income Tax Return (ITR-6) for the Asst. Year 2008-09 where the assessee had Rs. 19,89,300/- returned income. Also, the assessee filed return u/s 153A on 26-09-2014 with returned income of Rs.19,89,300/- for the Asst. Year 2008-09. Shri Swapan Kumar Paul, MD of Rajarshi Motors Pvt Ltd. and key person of searched group disclosed Rs.19,55,75,000/- in his disclosure statement u/s.132(4) dated 10/12/2013, which includes in the hand of Rajarshi Motors Ltd of Rs 95,00,000/- for the F.Y. 2007-08. But the assessee did not show its disclosure amount in its return u/s 153A.

3. Notice under section 143(2) was sent to the assessee for hearing on 22-07-2015. There was no compliance on that date and consequently a detailed questionnaire along with notice under section 142(1) was sent to the assessee on 15-10-2015 for hearing on 28-10-2015.

4. A letter from Shri Swapan Kumar Paul, Managing Director (MD) of the assessee was received with a petition for adjournment of hearing fixed for 28-10-2015. This petition was rejected and hearing refixed for 06-11-2015. The MD of the assessee Shri Swapan Kumar Paul appeared on that date but no detailed explanation or evidence as per questionnaire was submitted, instead a letter was submitted by him for another adjournment of reply to questionnaire within 15 days.

5. As there was no compliance to the questionnaire dated 15-10-2015, a show cause notice under section 142(1) was issued to the assessee on 04-12-2015 for hearing on 11-12-2015. A letter was received from the MD of the assessee on 11-12-2015, where another petition for adjournment of hearing was requested. Time sought for adjournment was not granted and a final show cause notice under section 142(1) was sent to assessee on 18-12-2015 for hearing on 23-12-2015 for producing supporting documents and also to cross examine the seized materials available with the department and following additions were proposed to be made in income of assessee.

A.Y	Details	Amount
2008-09	Undisclosed income	Rs.42,07,519/-
	Undisclosed fund diversion	Rs.1,08,26,724/-
	Undisclosed Investment	Rs.78,967/-

5. The MD of the assessee, Shri Swapan Paul, in its letter dated 11-12-2015 and letter dated 23-12-2015 has claimed that they have not received copies of tally data or of other seized documents and materials in absence of which



no explanation could be given for a satisfactory reply. But, in reply to our letter dated 15-12-2015 to the DDIT, Investigation Wing, Unit- 1(1), Guwahati, it was verified via their letter dated 18-12-2015 that Swapan Kumar Paul, who is the MD of the assessee, had himself requested for copies of the seized materials through letter dated 09-09-2015 and had therefore received copies of tally data and other documents through a mazhernama dated 10 & 11-09-2013. Thus, the assessee has made a false claim in its submissions just to avoid furnishing any reply as per questionnaire.

6. None appeared on 23-12-2015 on behalf of the assessee but a letter from Shri Subhajit Paul, Director of Rajarshi Motors Pvt Ltd was received on 23-12-2015, where some point wise reply to the questionnaire was mentioned but no supporting documents such as audit reports, audited accounts, ledgers or bills/vouchers or any other documents in support of his claim enclosed with the letter. Therefore the assessee was issued a last show cause notice under section 142(1) for hearing on 28-12-2015 for producing supporting documents and also to cross examine the seized materials available with the department.

7. Notice u/s 142(1) was sent to the assessee on 23/02/2016 for hearing on 1/3/16, and on that date the A/R of the assessee, Shri R.K. Das appeared but could not produce any books of accounts and other supporting evidence as requested and he requested for another 15 days time for reply. The A/R of the assessee further appeared on 15/03/2016 and submitted documents such as sales/purchase ledger, audit report and purchase statement but without any books of accounts and neither could the A/R produce any bills/vouchers or any other corroborative documents to substantiate its claim.

#### **Undisclosed income**

8. The difference in net profit as per the profit & loss account shown in the audit report vis-à-vis the profit & loss account in the data taken from tally for difference financial year is given in the table below (enclosed as Annexure "A1" and as part of this assessment order)

Tally data with path	F.Y.	Net profit as per P&L A/c.	Net profit as per audit report	Difference
PS-15/Computer Position/tally/data/0007	2007-08	6349560	2142041	42,07,519

The assessee has been unable to explain the difference and also failed to produce any counter documentary evidence supporting its cause during all the hearings or produce relevant books of accounts to authenticate-net-profit as per audit report. Since assessed is unable to prove its net profit as per audit report for the F.Y. 2007-08 is genuine, net profit as per seized document as referred in table is treated as net profit of the assessee for the F.Y. 2007-08.

Therefore, the amount of difference of Rs 42,07,519/- is hereby added back into the income of the assessee as undisclosed income. Penalty proceedings u/s 271(i)(c) is being separately initiated for furnishing inaccurate details and concealment of income.

Addition .....Rs. 42,07,519/-



### **Undisclosed fund diversion**

9. A print out of "statement of fund diverting from Rajarshi Motors to sister concern and personal drawings from 2001 to 31-03-2013" was taken from the folder "hard disk/Ratan/Ratan/Fund diversion & asset & liability" found in the seized CPU which shows year-wise break up of fund diversion from 2001 to 06-08-2013. (enclosed as Annexure "A2" and as part of this assessment order):

Financial Year	Total
2007-08	1,08,26,724

The assessee has been unable to explain the difference and also failed to produce any counter documentary evidence supporting its cause during all the hearings. Therefore, the amount of difference of Rs 1,08,26,724/- is hereby added back into the income of the assessee under section 68" as undisclosed income. Penalty proceedings u/s 271(1)(c) is being separately initiated for furnishing inaccurate details and concealment of income.

Addition u/s 68.....Rs. 1,08,26,724/-

### **Undisclosed investment**

10. During the course of search and seizure a ledger account of Rajarshi Motor Pvt. Ltd. In the books of Ramkrishna Transport for the Financial Year 2007-08 and an amount of Rs.78,967/- has been shown as liability in other words money advanced by Rajarshi Motor. Pvt. Ltd. To Ramkrishna Transport total transaction made during the year was Rs. 1,03,00,000/-, When to explain, Shri Swapan-Kumar-Paul-stated-in-his statement u/s.131-on 10-12-2013 that "This copy of ledger belongs to books of accounts of Ramkrishna Transport. It shows that money has been received and paid from Rajarshi Motors Pvt. Ltd. The surplus cash lying with RML office was sent to Namita Paul for keeping at home for safe custody and whenever required taken back. I am unable to explain why the same has been recorded in Namita Paul's account."

[Page no. 38 of loose sheet CN-4 enclosed as Annexure "A3" and as part of this assessment order]

The assessee has been unable to explain the differences and also failed to produce any counter documentary evidence supporting its cause during all the hearings. Therefore, the amount of outstanding liability of Rs 78,967/- which was not explained by Shri Swapan Paul or the A/R of the assessed and which is not shown in the balance sheet of the assessee is hereby added back into the income of the assessee under section 68 as undisclosed income. Penalty proceedings u/s 271(i)(c) is being separately initiated for furnishing inaccurate details and concealment of income.

Addition u/s 68.....Rs. 78,967/-

### **Voluntary Disclosure**

11. In course of search proceedings, Shri Swapan Kumar paul, Key person of the Swapan Kumar Paul group disclosed voluntarily Rs. 19,55,75,000/- as undisclosed income and submitted details of disclosure u/s. 132(4) as Annexure-2 of disclosure petition submitted on 10-12- 2013. According to his disclosure a sum of Rs 95,00,000/- was undisclosed income in the hands of Rajarshi Motors Pvt. Ltd. for



*F.Y. 2007-08. But the assessed did not consider this disclosure of Rs 95,00,000/- in its return u/s 153A. Since this amount is the voluntary disclosure of the assessee the amount of Rs 95,00,000/- minus undisclosed income of Rs 42,07,519/- already added as above i.e. Rs 52,92,481/- is hereby added as undisclosed income. Penalty proceedings u/s 271(i)(c) is being separately initiated for furnishing inaccurate details and concealment of income.*

*Addition .....Rs. 52,92,481/-*

*12. Therefore, the following amounts under the heads are added back into the income of the assessee as:*

<i>Returned Income</i>	<i>Rs.19,89,300/-</i>
<i>Add : Additions</i>	
<i>Undisclosed Income</i>	<i>Rs.42,07,519/-</i>
<i>Undisclosed Fund Diversion</i>	<i>Rs.1,08,26,724/-</i>
<i>Undisclosed Investment</i>	<i>Rs.78,967/-</i>
<i>Undisclosed Income</i>	<i>Rs,52,92,481/-</i>
<i>Assessed Income</i>	<i>Rs.2,23,94,991/-</i>

*Assessed u/s 153A/143(3) as above.  
Penalty proceedings u/s 271(1)(c) initiated separately.  
Credit for pre-paid taxes given.  
Copy of assessment order along with demand notice issued.  
Computation sheet attached with the order.*

*Sd/-  
(B. DEBBARMA)  
Assistant Commissioner of Income Tax  
Agartala Circle : Agartala*

4. In the First Appellate Proceedings, the ld.CIT(A) gave part relief to the assessee. While doing so, the ld.CIT(A) deleted the additions of Rs.42,07,519/- and Rs.78,967/- made by the AO on account of undisclosed income and undisclosed investment.

5. Aggrieved by the relief given by the ld.CIT(A), the Revenue has filed the appeals whereas the assessee company has also filed Cross Objections against the sustenance of addition of Rs.1,08,26,724/-.

6. The Cross Objections filed by the assessee and the Grounds of appeal Raised by the Revenue for the A.Y. 2008-09 (taken as lead case) read as under :



### **Cross Objections by Assessee :**

- “1. For that the appeal of the Revenue is time barred.
2. For that the ld.CIT(A) ought to have held that order of assessment is bad in law and unsustainable being passed in violation of section 153D of the Act.
3. For that the ld.CIT(A) was justified in deleting the arbitrarily made addition of Rs.42,07,519/- made by the ld. AO on the basis of unsubstantiated and unreliable documents.
4. For that the ld.CIT(A) was justified in deleting the arbitrarily made addition of Rs.52,92,481/- in absence of any corroborative materials.
5. For that the ld.CIT(A) ought to have held that the order of assessment being passed in gross violation of principles of natural justice and fair play, the same is legally untenable.
6. For that the cross-objector craves leave of your honours to take additional ground or grounds of cross objection and/or to modify or resign any ground(s) of cross objection at or before the time of hearing.”

### **Grounds of Appeal by Revenue :**

1. That on the facts and circumstances of the case, the Ld.CIT(A) is erred in granting relief to the assessee accepting the submission of the assessee that assessee was on expansion mode and it was trying to get its credit limit raised from bank without considering the facts that whether the bank loan was actually obtained on the basis of the accounts found on tally software whether any physical stock verification was carried on by the banks etc.
  2. That on the facts and circumstances of the case, the Ld.CIT(A) is erred in allowing relief on the addition made by the Assessing Officer on the basis of disclosure made by the assessee in the submission u/s.132(4).
  3. For that the appellant craves leave to add, alter, amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”
7. Firstly, we will take the legal issue raised in the Cross Objection by assessee for various captioned years stating that the assessment order is bad in law and unsustainable being passed in violation of section 153D of the Act.
8. Ld. Counsel for the assessee has filed detailed written submissions and referred to plethora of judicial pronouncements. On the legal issue, it was contended that the AO has to obtain approval u/s.153D for each of the assessment year. However, consolidated approval has been given by the competent authority



for all the assessment years 2008-09 to 2014-15 under consideration, which is not in accordance with law. Further, the consolidated approval does not contain any facts of the case much less variations in the returned income which were proposed in the draft assessment order for each assessment year. Considering the number of cases which were part of the search proceedings and which have been mentioned in the approval order u/s.153D of the Act clearly indicate that it was not possible for the approving authority to give approval for so many cases in such short span of time and it seems to be a mechanical approval without any proper application of mind on the facts of the case. Therefore, the case of the assessee company is squarely covered in favour of the assessee by virtue of decision of Allahabad High Court in the case of *Pr.CIT Vs. Subodh Agarwal (2023) 450 ITR 526 (All.)* and others discussed in the written submissions running into 17 pages given at the time of previous date of hearing fixed on 07.08.2023. Ld. Counsel for the assessee also referred to paper book No.2 dated 30.03.2022 containing 32 pages and prayed that the legal issue is allowable in favour of the assessee in the light of the judicial precedents. So far as the other grounds of appeal raised on merits of the case in the Cross Objections they are merely supporting the finding of ld.CIT(A).

9. On the other hand, ld. Departmental Representative stated that the assessee did not participate in the assessment proceedings and no details were filed and whatever documents which were available with the AO found during the course of search were maintained in two sets of which one was with the Assessing Officer and the other with the approving authority prescribed u/s.153D of the Act. Since the assessee has not participated in the proceedings, there were no much voluminous assessment record for the approving authority for examining the



same prior to giving the approval u/s.153D of the Act and it need much less time to give the approval. Further, since all the group cases were part of the search and in absence of any details filed by the assessee, the same could not be corroborated with each of the particular case to the best possible extent, therefore a combined approval order may have been given by the prescribed authority u/s.153D of the Act.

10. We have heard the rival contentions and perused the record placed before us. We have carefully gone through the written submissions filed on behalf of the assessee company wherein certain decisions were relied on with regard to the legal issue. The assessee vide Ground No.2 in the cross objections has challenged the assessment being passed in violation of section u/s.153D of the Act, for the first time before this Tribunal. The same being legal ground not requiring any fresh examination of facts, is admitted for hearing in the light of the judgment of Hon'ble Supreme Court in *National Thermal Power Company Ltd. Vs. CIT (1998) 229 ITR 383 (SC)*. However, since, this is an additional ground raised by the Appellant before the Hon'ble Tribunal, obviously the First Appellate Authority did not have the occasion to consider, evaluate and decide the issue on the approval accorded u/s.153D of the Act. We also observed that even when the assessee has been subjected to search proceedings and various documents were seized which may have been incriminating in nature and also a surrender was made by the assessee for the group cases. Still the assessee failed to make proper compliance during the course of assessment proceedings carried out subsequent to issue of notice u/s.153A of the Act. The order u/s.153D of the Act has not been challenged by the assessee before the Id.CIT(A). However, since the legality of approval u/s.153D is challenged and is a legal issue, and the



same has been admitted by us in light of the judgment of Hon'ble Apex Court in the case of *National Thermal Power Company Ltd. Vs. CIT (supra)*, we deem it proper to restore the legal issue to the file of Id.CIT(A) who shall call for the comments from the Assessing Officer about the steps taken during the course of assessment proceedings for getting approval u/s.153D of the Act, comments of the officer who gave approval u/s.153D of the Act along with other necessary facts showing the non-compliance of the assessee to reply to the notices and the letters issued by the Id. Assessing Officer for carrying out the assessment proceedings. Id.CIT(A) shall duly consider the facts of the case as well as settled judicial precedents as referred to by the Id. Counsel for the assessee in the written submissions placed before us and decide in accordance with law. Accordingly, this common legal issue challenging the validity of assessment proceedings being passed in violation of section 153D of the Act commonly for the A.Yrs. 2008-09 to 2014-15 is allowed for statistical purposes. Needless to say, the assessee shall be afforded due opportunity of hearing in such proceedings. Grounds of appeal raised by the assessee on legal issue in all the cross objections are allowed for statistical purposes.

11. Now coming to the merits of the case, where the Revenue has challenged the finding of Id.CIT(A) giving relief to the assessee deleting the additions made by Assessing Officer and also the grounds raised by the assessee in the Cross Objections which are merely supporting the finding of Id.CIT(A). We find that Id.CIT(A) has given relief to the assessee without considering the fact that the Id. Assessing Officer had no occasion to examine the details filed by the assessee before Id.CIT(A) because there was no compliance during the course of assessment proceedings. It is also not evident from the impugned order as to whether any



remand report was called for from the Assessing Officer or not. However, since we have already remitted the legal issue commonly raised by the assessee in the Cross Objections to the file of Id.CIT(A), we in the interest of justice and being fair to both the parties, deem it proper to restore the issue on merits as well to the file of Id.CIT(A) to decide in accordance with provisions of section 250(6) of the Act after affording reasonable opportunity of being heard to the assessee.

12. In the result, all the grounds of appeal raised by the Revenue in ITA Nos. 117 to 123/GTY/2018 and ITA Nos.180 to 186/GTY/2018 file by Assessee are allowed for statistical purposes and all the grounds of appeal raised in the Cross Objection Nos.32 to 38/GTY/2018 by the assessee are allowed for statistical purposes.

Order pronounced on this 06<sup>th</sup> day of February, 2025.

Sd/-

Sd/-

**(MANOMOHAN DAS)**  
**JUDICIAL MEMBER**

**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

दिनांक / Dated : 06<sup>th</sup> February, 2025  
*Satish*

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “, Guwahati” बेंच,  
/ DR, ITAT, Guwahati Bench
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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For Assistant Registrar