IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI

Before Sh. Satbeer Singh Godara, Judicial Member
&
Sh. Manish Agarwal, Accountant Member

ITA No. 4288/Del/2017 : Asstt. Year: 2012-13

DCIT, Central Circle-1, Faridabad, Haryana	Vs	Empire Realtech Pvt. Ltd., SF 16-17, 1st Floor, Madame Bhikaji Cama Place, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AACCE4651J		

CO No. 233/Del/2017 : Asstt. Year: 2012-13

Empire Realtech Pvt. Ltd., SF 16-17, 1st Floor, Madame Bhikaji Cama Place, New Delhi	Vs	DCIT, Central Circle-1, Faridabad, Haryana
(APPELLANT)		(RESPONDENT)
PAN No. AACCE4651J		

Assessee by : Sh. Aditya Gauri, Adv. &
Sh. Amar Vivek, Adv.
Revenue by : Sh. Surender Pal, CIT-DR

Date of Hearing: 24.02.2025		**Date of Pronouncement: 24.02.2025**

ORDER

Per Satbeer Singh Godara, Judicial Member:

This Revenue's appeal and assessee's cross objection for Assessment Year 2012-13, arise against the CIT(A)-3, Gurgaon's in case No. CIT(A), 151/CIT(A)(C)/GGN/2014-15 dated 05.04.2017, in proceedings u/s 153A(1)(b) r.w.s. 143(3) of the Income Tax Act, 1961 (in short "the Act").

2. Heard both the parties at length. Case file perused.

3. Learned CIT-DR invites our attention to the Revenue's instant appeal ITA No. 4288/Del/2017 raising the following substantive grounds:

> *"(i) Whether on the facts and circumstances of the case, the Ld. CIT(A) was right in deleting the addition of Rs. 22,22,41,401/- made u/s 40A(2)(b) of the LT. Act/ Close relatives of the specified persons when the AO had sufficient evidence that excessive payments have been made to the specified persons/ their close relatives.*
>
> *(ii) Whether on the facts and in the circumstances of the case the Ld. CIT(A) has erred in ignoring the fact that the lands of the specified persons/ their close relatives were adjoining/contemporary in period/even the sale deeds with the specified persons and their close relatives were earlier to issue of letter of intent."*

4. We next note that the assessee's cross objection CO No. 233/Del/2017 involves the following pleadings:

> *"1. That the learned Commissioner of Income Tax (Appeals)-Gurgaon has grossly erred both in law and on facts in failing to appreciate that since the addition made in the order of assessment were not based on any incriminating material found as a result of search on the appellant company and therefore they were without jurisdiction.*
>
> *1.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that in absence of any notice u/s 143(2) of the Act having been issued and served before the date of search it ought to have been held that no proceedings were pending on the date of search and consequently addition made in the order of assessment was without jurisdiction.*
>
> *2 That since approval obtained u/s 153D of the Act was a mechanical and, invalid approval having been granted without due application of mind on the facts of the assessee company, order of assessment made u/s 153A(1)(b) is invalid and not in accordance with law."*

5. It is in this factual backdrop that the learned CIT-DR could hardly dispute the clinching fact that the assessee's cross objection raises the foregoing legal issue of validity of the impugned assessment framed by the Assessing Officer dated 18.02.2015 itself; for want of a valid section 153D approval in furtherance to the search in question carried out by the departmental authorities on 23.11.2012. We make it clear that the learned Assessing Officer's section 153D approval sought dated 12.02.2015 forms part of the records before us which is found to be a common one for assessment years 2009-10, 2010-11 and 2012-13, which stood granted on 16.02.2015.

6. Faced with this situation, we invited Revenue's attention to various recent decisions that such an assessment based on a common section 153D approval is not sustainable in law in light of learned co-ordinate bench's order in Aditya Sharma Vs. ACIT, ITA Nos. 3616 to 3621/Del/2019 vide order dated 15.01.2025 holding as under:

> *"3. We next note that there arises the first and foremost issue of validity of all the impugned assessments framed u/s 143(3) r.w.s. 153A of the Act; dated 02.03.2017, in consequence to the search action herein dated 15.02.2014, on the ground that the learned prescribed authority had not accorded a valid approval thereto u/s 153D of the Act. The Revenue could hardly dispute that the instant legal ground sought to be raised*

at the assessee's behest goes to the root of the matter and therefore, we quote National Thermal Power Co. Ltd. vs. CIT (1998) 229 ITR 383 (SC); as considered in Allcargo Global Logistics Ltd. vs. DCIT (2012) 137 ITD 287 (SB) (Mum), that such an additional ground could very well be allowed to be raised in section 254(1) proceedings, in order to determine the correct tax liability of an assessee provided all the relevant facts form part of the records.

4. It is in this factual backdrop that we admit the assessee's instant legal ground and note with the able assistance coming from both the parties that the learned Assessing Officer had sought the prescribed authority's approval on 27.02.2017 which stood granted on 02.03.2017. The clinching fact which from page 10 in the assessee's paper book is that the learned Assessing Officer herein had infact sought a common approval for all these assessment years from 2008-09 to 2013-14 which stood granted, and therefore, we quote PCIT Vs. Shiv Kumar Nayyar (2024) 163 taxmann.com 9 (Del.), PCIT Vs. MDLR Hotels (P) Ltd. (2024) 166 taxmann.com 327 (Del.) and ACIT vs. Serajuddin and Co. (2024) 163 taxmann.com 118 (SC), to conclude that such a combined section 153D approval indeed vitiates the entire assessment itself. We draw strong therefrom to quash all the impugned assessments framed herein in assessee's case in assessment years 2008-09 to 2013-14 in very terms."

7. Learned CIT-DR has filed a copy of Revenue's written submissions as under:

"Sub: Written Submission in the above case on the legal ground of validity of Section 153D approval granted by the JCIT/Addl. CIT- reg.

In the above case, it is humbly submitted that in addition to the oral arguments submitted by the undersigned, the following legal issues/legal submissions, relevant to section 153D approval and two vital Judgments of the Hon. Supreme Court, on the legality and legal requirements of the Administrative Orders of government or executive authorities, may kindly be considered:-

1. The word/phrase - "written approval" is not mentioned in the section 153D of the Income tax Act, 1961. The only phrase used is "the prior approval". Therefore, the contents of the written order of the JCIT/Addl. CIT are legally not required to be examined or considered, for meeting the legal or factual requirements of the approval under section 153D.

2. The order by the Addl. CIT/JCIT under section 153D is an Administrative Order, by the higher authority i.e. JCIT/Addl. CIT to the lower authority, i.e. AO. Such an order is not a quasi-judicial or judicial order. Therefore, the legal requirements and benchmarks regarding the principles of "the application of mind" and "the speaking order" are not as strict or high, as they are in the case of quasi-judicial or judicial order.

3. In respect of the legal requirements and the benchmarks regarding the administrative orders, the Hon. Supreme Court has given many comprehensive judgements, which are enclosed and the relevant portions/parts are quoted as under:-

(i) Decision of Hon'ble Supreme Court in the case of Municipal Council Neemuch vs Mahadeo Real Estate, dated 17 September, 2019, AIR 2019 SC 4517, 2019 (10) SCC 738.

".... 14. In the present case, the learned Judges of the Division Bench have arrived at a finding that such a sanction was, in fact, granted. We will examine the correctness of the said finding of fact at a subsequent stage. However, before doing that, we propose to examine the scope of the powers of the High Court of judicial review of an administrative action. Though, there are a catena of judgments of this Court on the said issue, the law laid down by this Court in the case of Tata Cellular Vs. Union of India reported in (1994) 6 SCC 651 lays down the basic principles which still hold the field. Paragraph 77 of the said judgment reads thus:
"77. The duty of the court is to confine itself to the question of legality. Its concern should be:-

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,

4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:-

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
(ii) Irrationality, namely, unreasonableness.
(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. V. Secretary of State for the Home Department, ex Brind, (1991) 1 AC 696, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, 'consider whether something has gone wrong of a nature and degree which requires its intervention".

15. It could thus be seen that the scope of judicial review of an administrative action is very limited. Unless the Court comes to a conclusion, that the decision maker has not understood the law correctly that regulates his decision-making power or when it is found that the decision of the decision maker is vitiated by irrationality and that too on the principle of "Wednesbury Unreasonableness" or unless it is found that there has been a procedural impropriety in the decision-making process, it would not be permissible for the High Court to interfere in the decision making process. It is also equally well settled, that it is not permissible for the Court to examine the validity of the decision but this Court can examine only the correctness of the decision making process.

16. This Court recently in the case of West Bengal Central School Service Commission Vs. Abdul Halim reported in 2019 SCC OnLine SC 902 had again an

occasion to consider the scope of interference under Article 226 in an administrative action.

31. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in Satyanarayan v. Mallikarjuna reported in AIR 1960 SC 137. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ Court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ Court by issuance of writ of Certiorari.

32. The sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a writ Court. If the decision cannot rationally be supported by the materials on record, the same may be regarded as perverse. Municipal Council Neemuch vs Mahadeo Real Estate on 17 September, 2019 Indian Kanoon - http://indiankanoon.org/doc/83894917/ 6.

33. However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The writ Court does not Interfere, because a decision is not perfect.

17. It could thus be seen that an interference by the High Court would be warranted only when the decision impugned is vitiated by an apparent error of law, i.e.,

when the error is apparent on the face of the record and is self evident. The High Court would be empowered to exercise the powers when it finds that the decision impugned is so arbitrary and capricious that no reasonable person would have ever arrived at. It has been reiterated that the test is not what the court considers reasonable or unreasonable but a decision which the court thinks that no reasonable person could have taken. Not only this but such a decision must have led to manifest injustice .....

25. In the present case, we find that the Commissioner had acted rightly as a custodian of the public property by pointing out the anomalies in the proposal of the Municipal Council to the State Government and the State Government has also responded in the right perspective by authorizing the Commissioner to take an appropriate decision. We are of the considered view that, both, the Commissioner as well as the State Government, have acted in the larger public interest, We are unable to appreciate as to how the High Court, in the present matter, could have come to a conclusion that it was empowered to exercise the power of judicial review to prevent arbitrariness or favoritism on the part of the State authorities, as has been observed by it in paragraph 13. We are also unable to appreciate the finding of the High Court in para 17 wherein it has observed that the impugned decision of the authorities are found not to be in the public interest. We ask the question to us, as to whether directing re-tendering by inviting fresh tenders after giving wide publicity at the National level so as to obtain the best price for the public property, would be in the public interest or as to whether awarding contract to a bidder in the tender process where it is found that there was no adequate interest or as to whether publicity and also a possibility of there being a cartel of bidders, would be In the public interest. We are of the considered view that the decision of the Commissioner which is set aside by the High Court is undoubtedly in larger public Interest, which would ensure that the Municipal Council earns a higher revenue by enlarging the scope of the competition. By no stretch of imagination, the decision of the State Government or the Commissioner could be termed as illegal, improper, unreasonable or irrational, which parameters only could have permitted the High Court to interfere. Interference by the High Court when none of such parameters exist, in

our view, was totally improper. On the contrary, we find that it is the High Court, which has failed to take into consideration relevant material.

26. In the result, the impugned Orders are not sustainable in law. The appeals are, accordingly, allowed and the Impugned orders dated 31.08.2017 and 05.07.2018 are quashed and set aside. The petition of respondent No. 1 stands dismissed……..."

(ii) Decision of Hon'ble Supreme Court in the case of West Bengal Central School Service ... vs Abdul Halim dated 24 July, 2019, AIR 2019 SC 4504, AIRONLINE 2019 SC 2188 AIR 2020 SC (CIV) 82.

"……..31. The sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a writ Court. If the decision cannot rationally be supported by the materials on record, the same may be regarded as perverse.

32. However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The writ Court does not interfere, because a decision is not perfect.

33. In entertaining and allowing the writ petition, the High Court has lost sight of the limits of its extraordinary power of judicial review and has in fact sat in appeal over the decision of the respondent No. 2……."

8. We have given our thoughtful consideration to the assessee's pleadings and Revenue's vehement contentions as well as it's written submission. We find no reason to uphold the validity of the impugned assessment as it has come on record

that the same has been framed in furtherance to a common section 153D approval already held as not sustainable in law. We order accordingly.

9. The assessee's cross objection herein CO No. 233/Del/2017 succeeds and the Revenue's appeal ITA No. 4288/Del/2017 fails in very terms. Ordered accordingly.

10. To sum up, this Revenue's appeal ITA No. 4288/Del/2017 is dismissed and the cross objection CO No. 233/Del/2017 is allowed. A copy of this common order be placed in the respective case files.

Order Pronounced in the Open Court on 24/02/2025.

Sd/-	Sd/-
(Manish Agarwal)	**(Satbeer Singh Godara)**
Accountant Member	**Judicial Member**

Dated: 24/02/2025
Subodh Kumar, Sr. PS
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR