

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

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER

ITA No.2812/Del/2022 Assessment Year: 2015-16
ITA No.2813/Del/2022 Assessment Year: 2016-17
ITA No.2814/Del/2022 Assessment Year: 2017-18

Pawan Kumar Midha, 1369, 3 rd Floor, Dr. Mukherji Nagarm, North- West, New Delhi PIN: 1100 09 [PAN No. DGZPM7291B]	Vs.	DCIT/ACIT (Central), Noida (Gautam Budh Nagar), PIN: 201 301
(APPELLANT)		(RESPONDENT)

Appellant by	Shri Shantanu Kanunga, Adv.
Respondent by	Ms. Suman Malik, CIT DR

Date of hearing:	15/01/2025
Date of Pronouncement:	21/ 03/2025

ORDER

Per Dr. Mitha Lal Meena, A.M.:

These appeals by assessee are directed against the separate orders dated 31.10.2022 passed by the Commissioner of Income-Tax (Appeal)-24, New Delhi [hereinafter referred to as "CIT(A)"] in respect of assessment years 2015-16 to 2017-18.

2. The assessee has taken common grounds and additional legal grounds except variation in the quantum addition, in all these appeals were heard together and adjudicated together by the consolidated order. The grounds and additional legal ground are taken from ITA No.2812/Del/2022 in respect of Assessment Year: 2015-16 for discussion and adjudication as a lead case as follows:

1. That the order is against the fact and law of the case.
2. That the appellant has not provided proper opportunity of being heard which is bad in law as against the principal of natural law of justice.
3. That neither the A/A nor the Appellant authority at any stage replied the point raised by the A/R, whether the search was conducted legally and procedure as provided u/s 132 has followed or not?
4. That A/A erred in making the addition on account of notional Rent whereas the same is being used by the parents of the assessee and the Appellant Authority further erred in confirming the same by ignoring the moral, legal & humanitarian responsibility of the children to provide shelter to the parents in their old age.
5. That the A/A framed the assessment arbitrary, illegal which is bad in law as considering the loose paper as basis of addition without giving credit to the rental income earned and accumulated by the wife of the assessee and the appellant authority further erred in accepting the same.

6. That the A/A erred in not considering the rental income of the wife of the assessee for previous years. And appellant authority further erred in accepting the same partly Without asking for any further question in this regard whereas the rent is being received from the students of various professional and technical courses like U.P.S.C. etc. who comes Delhi to do study and reside as casual tenant therefore no regular agreement is being executed

7. That facts of the present case is altogether different as the case discussed and citation quoted by the by the A/A as well as by the Appellant Authority

8. That the A/A frame the assessment as the judge of his own and contradict contention, where ever he want taxed the rent as notional income and wherever he wants rejected the rental income Appellant Authority further erred accepting the same which is against the law of jurisprudence.

9. That the Appellant craves to add/amend any grounds of appeal on or before or at the time of hearing.

Additional Ground:

" That in view of the facts and circumstances of the case, and in law, the approval u/s.153D of the Income Tax Act v 1961 is mechanical and without any application of mind an not a valid approval. Thus the impugned assessment order is illegal, bad in law, and liable to be quashed."

3. The Id. counsel for the appellant assessee requested for admission of the additional legal ground and submitted that the legal

ground does not require new facts to be investigated, and since it goes to the root of the matter to decide the appeal. Therefore, the AR pleaded that the additional ground may be admitted in the light of the judgement of Honorable Supreme Court in the case of NTPC limited Vs. CIT 229, ITR 383.

3.1 After hearing both the sides, we find the common additional legal ground of appeal raised by the appellant in the three instant appeals pertains to the validity of approval granted u/s.153D of the Income Tax Act 1961 by the Addl. CIT in mechanical and without any application of mind which goes to the root of the matter. Undisputedly, the additional grounds of appeal on legal issue which goes to the root of the matter to decide the appeals which was inadvertently not included in the grounds of appeal and the Ld. DR failed to rebut the contention of the appellant. Therefore, we admit the same for adjudication in view of the judgment of the Hon'ble Apex Court in the case of NTPC Ltd. v. CIT (Supra).

4. At the time of hearing, the Ld. AR, was permitted to first present its arguments in respect of the appeal in I.T.A. No. ITA No.2812/Del/2022 in respect of Assessment Year: 2015-16 as a lead

case. The Ld. Counsel submitted that the approval under section 153D of the act was granted on the same date on which the assessment order has been passed that is 31.12.2019, in group three cases, in mechanical manner, vide letter number F. No. JCIT/CR-5/153D/2019-20-19/1034 dated 31.12.2019 and assessment order was passed on the same date on receipt of the aforesaid approval.

5. The Ld. Counsel for the assessee contended that the JCIT has granted approval in a mechanical manner in violation of mandatory provisions of Section 153D of the Act and the purported approval was in violation of provisions u/s 153D of the Act. Thus, the approval granted was illegal, bad in law as being granted without any application of mind. He has drawn attention of the bench to the sequence of events that draft Assessment order was and the manner, the approval was granted u/s 153D of the Act, in the present case. He pleaded that the assessment order is illegal and bad in law. In support, He placed reliance on the following decisions

1. Delhi High Court in the case of 2024 (6) TMI 29 - DELHI HIGH COURT: [2024] 467 ITR 186 (Del) PR. COMMISSIONER

OF INCOME TAX-15 VERSUS SHIV KUMAR NAYYAR ITA 285/2024 & CM APPL 28994/2024 Dated: - 15-5-2024.

2. 2023 (7) TMJ 1214 - DELHI HIGH COURT: [2024] 466 ITR 251 (Del) PR. COMMISSIONER OF INCOME TAX (CENTRAL) - 2 VERSUS ANUJ BANSAL ITA 368/2023 Dated: - 13-7-2023.

3. HIGH COURT OF ALLAHABAD Principal Commissioner of Income-tax v. Subodh Agarwal [2023] 149 taxmann.com 373 (Allahabad).

6. The Ld. CIT (DR) on the other hand stands by the impugned order. However, she failed to furnish any judgement in rebuttal to the contention of the assessee.

7. We have heard the rival contentions, perused the material on record, impugned order, written submission and case law cited before us. It is undisputed fact on record that the approval under section 153D of the act was granted by the JCIT vide letter number F. No. JCIT/CR-5/153D/2019-20-19/1034 dated 31.12.2019 in respect of the all the three assessment Years under consideration and the respective assessment orders were passed on the same date on receipt of the

aforesaid approval as evident from the factum of Letter No. and date of approval granted by the JCIT u/s 153D of the Act, and that date of assessment orders mentioned in the body of the assessment orders passed by the AO.

8. Recently Hon'ble DELHI HIGH COURT 2024 (6) TMI 29: [2024] 467 ITR 186 (Del) in case of PR. COMMISSIONER OF INCOME TAX-15 VERSUS SHIV KUMAR NAYYAR ITA 285/2024 & CM APPL 28994/2024 dated 15-5-2024 has observed that Approval u/s 153D of the Act has to be granted for "each assessment year" referred to in clause (b) Of subsection (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 PCIT v. Sapna Gupta R 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. It is further 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

the 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.

9. Therefore, the 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. In our considered view, a mere endorsement to a list of cases of Assessment Orders in multiple cases by putting signatures with "rubber stamping" on the letter without application of mind will not satisfy the requirement of the law for approval or sanction u/s 153D of the Act. Therefore, we hold that in the present case, the prior approval of the Addl/Joint CIT required before passing of the Assessment Orders in pursuant to a search operation being a mandatory requirement of section 153D of the Act, was not granted as per law because such approval is not meant to be given in mechanical manner

without application of mind by the JCIT which resulted in vitiating the assessment orders per se.

10. In the above view, considering the peculiar facts of the present case, we hold that mandatory approval was being granted mechanically without application of mind by Joint Commissioner of Income Tax, Central- Range-5, New Delhi, and therefore, this mechanical exercise of power has vitiated entire assessment proceedings and consequently, the said assessment orders are rendered void ab initio. Accordingly, the impugned order is held to be infirm, illegal and bad in law and same is as such quashed.

11. Since, the assessee has succeeded in the legal issue in the additional ground and hence the assessment has been held to be invalid. Accordingly, we do not proceed to adjudicate the issue raised on merits in quantum addition.

12. The facts on the legal issue in I.T.A. Nos. 2813/Del/2022 and 2814/Del/2022 are exactly like the facts in I.T.A. No. 2812/Del/2022. The approval was granted on 31/12/2019 u/s 153D of the Act on the

same date i.e. 31/12/2019 in respect of 3 Assessment Years under consideration. Therefore, our observation and findings given in I.T.A. No. I.T.A. No. 2812/Del/2022 shall be applicable to the I.T.A. Nos. 6 to 9/Asr/2020 in mutatis mutandis, Ordered Accordingly.

13. In the result, these three appeals of the assessee are allowed.

Order pronounced on 21/03/2025 in accordance with the Rule 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER

Mohan Lal

Dated: 27.03.2025

Copy forwarded to:

1.Appellant

2.Respondent

3.CIT

4.CIT(Appeals)

5.DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI