

IN THE INCOME TAX APPELLATE TRIBUNAL
“DB” BENCH, AGRA

**BEFORE HON’BLE SHRI SATBEER SINGH GODARA, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**1. आयकरअपील सं. / ITA No.185/Agr/2019
(निर्धारणवर्ष / Assessment Year: 2011-12)**

&

**2. आयकरअपील सं. / ITA No.186/Agr/2019
(निर्धारणवर्ष / Assessment Year: 2012-13)**

&

**3. आयकरअपील सं. / ITA No.187/Agr/2019
(निर्धारणवर्ष / Assessment Year: 2011-12)**

&

**4. आयकरअपील सं. / ITA No.188/Agr/2019
(निर्धारणवर्ष / Assessment Year: 2012-13)**

Shri Manoj Goyal 22, Nehru Nagar, Agra – 282002	बनाम/ Vs.	DCIT Central Circle Agra
स्थायीलेखासं./जीआइआरसं./TAN/GIR No. ABCPG-3816-F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Anurga Sinha (Advocate) – Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Sukesh Kumar Jain (CIT) – Ld. CIT-DR

सुनवाईकीतारीख/ Date of Hearing	:	21-02-2025
घोषणाकीतारीख / Date of Pronouncement	:	28-03-2025

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aggrieved appeals by assessee arises out of quantum assessment order as well as penalty orders of Ld. AO for Assessment Years (AY) 2011-12 & 2012-13 which has been confirmed by Ld. CIT(A).

2. Pursuant to search action on assessee, assessment for AY 2011-12 was framed u/s 153A on 29-03-2016 wherein Ld. AO made addition of Rs.116 Lacs. Similar assessment was framed for AY 2012-13 making additions of Rs.47.50 Lacs. The Ld. AO also levied consequential penalty u/s 271AB for both the years. The Ld. CIT(A) enhanced quantum additions by Rs.3.74 Lacs for AY 2011-12 and also confirmed the quantum assessment order for AY 2012-13 as well as penalty orders for both the years. Aggrieved, the assessee is in further appeal before us.

3. The Ld. AR, at the outset, took us through Page No.11 of the paper-book wherein JCIT, Central Range, Kanpur has accorded approval u/s 153D on 29-03-2016 to DCIT, Central Circle, Agra. The Ld. AR raised a pertinent legal ground that a combined approval has been given with respect to two different assessees and that too for various assessment years viz. AY 2008-09 to 2014-15. The Ld. AR referred to various case laws to support the submission that such a combined approval would vitiate the entire assessment proceedings since the same are deemed to be given in a mechanical manner. The Ld. CIT-DR controverted the same and contended that the approval was given with due application of mind.

4. We are of the opinion that this legal issue stood covered in assessee's favor by the decision of jurisdictional High Court in the case of **CIT vs. Subodh Agarwal (149 Taxmann.com 373)** wherein the substantive findings of Hon'ble Court was as under: -

9. Considering the submissions of the learned counsel for the parties and having perused the order of the Tribunal, in view of the undisputed facts before us about the manner in which the approval to the draft assessment order was granted under section 153D for the assessment proceedings, by a letter dated 31-12-2017 in 38 cases placed before the approving authority in a single day, we are required to examine as to whether a substantial question of law arises for consideration before us so as to admit the present appeal.

To answer the same, we are required to go through the relevant provisions of the Income-tax Act. Section 132 provides the procedure for search and seizure operations in consequence of the information in possession of the Income-tax Authorities. Section 153A prescribes assessment in case of search or requisition. Section 153A provides that in the case of a person where a search is initiated under section 132, the Assessing Officer shall issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years (and for the relevant assessment year or years) referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may apply accordingly as if such return were a return required to be furnished under section 139.

10. Section 153D of the Act relevant for our purposes is to be noted hereinunder:

"Prior approval necessary for assessment in cases of search or requisition.

153D.—No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of [sub-section (1) of] section 153A or the assessment year referred to in clause (b) of sub-section (1) of section 153B, except with the prior approval of the Joint Commissioner.

Provided that nothing contained in this section shall apply where the assessment or reassessment order, as the case may be, is required to be passed by the Assessing Officer with the prior approval of the [Principal Commissioner or] Commissioner under sub-section (12) of section 144BA."

11. The Tribunal while quashing the assessment order had relied upon its earlier decision in *Navin Jain and Others (supra)* wherein a detailed discussion has been made with regard to the requirement of prior approval of superior authority on the draft assessment order under section 153D, before passing the assessment order by the Assessing Officer. It was noted that the word 'approval' though has not been defined in the Income-tax Act but the general meaning of the word 'approval' in Black's Law Dictionary, 6th Edition was to be seen. The decision of the Apex Court in *Vijayadevi Naval Kishore Bharatia v. Land Acquisition Officer* (2003) 5 SCC83 wherein the distinction between Approving Authority and Appellate Authority was drawn, had been noted. The decision of the High Court of Gauhati in *Dharampal Satyapal Ltd. v. Union of India* [2019] 366 ELT 253 has been noted to record that grant of approval means due application of mind on the subject matter approved which satisfies all the legal and procedural requirements. There is an exhaustive discussion on the requirement of prior approval under section 153D of the Act and it was noted that the requirement of approval cannot be treated as mere formality and the mandate of the Act that the Approving Authority has to act in a judicious manner by due application of mind in a manner of a quasi judicial authority, has been considered.

12. It was held therein that 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 sections 153D and 153A 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 sections 153A to 153D 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.

13. It was noted that the obligations of the approval of the Approving Authority serves two purposes:(i) On the one hand, he has to apply his mind to ensure the interest of the revenue against any omission or negligence by the Assessing Officer in taxing right income in the hands of right person and in right assessment year.(ii) On the other hand, superior authority is also responsible and duty-bound to do justice with the tax-payer by granting protection against arbitrary or creating baseless tax liability on the assessee.

14. The Tribunal has further noted that the provisions contained in section 153A to section 153D provide for separate notice to be given to assessee for assessment for each year as specified in section 153A of the Act; the assessee has to file separate ITR for each year as specified in section 153A of the Act; separate assessment orders are to be passed for each year as specified in section 153A of the Act.

15. It was observed that this is an important concept mentioned in section 153A of the Act, which is peculiar to the scheme of the said section. Keeping in view of this basic fundamental features of section 153A, if section 153D is scrutinized, then, it would become manifest that an important phrase is employed in the text of section 153D, which is "each assessment year". The reading of the provisions in section 153A and 153D conjointly makes it clear that separate approval of draft assessment order for each year is to be obtained under section 153D of the Income-tax Act. In its erudite judgement with the discussion on the legislative intent of sections 153A to 153D and the meaning of the "approval" as defined in Black's Law Dictionary as also the decisions of the Apex Court in the case of *Sahara India(Firm) v. CIT* [2008] 169 Taxman 328/300 ITR 403 where the discussion on the requirement of prior approval of Chief Commissioner or Commissioner in terms of provision of section 142(2A) of the Act had been made, it was noted that the Apex Court has held therein that the requirement of previous approval of the Chief Commissioner or Commissioner in terms of the said provision being an in-built protection against arbitrary or unjust exercise of power by the Assessing Officer casts a very heavy duty on the said high ranking authority to see that the approval envisaged in the section is not turned into an empty ritual. The Apex Court has held therein that the approval must be granted only on the basis of material available on record and the approval must reflect the application of mind to the facts of the case.

The above discussion made in the judgement of Tribunal dated 3-8-2021 in the case of *Navin Jain (supra)* has been relied by the Tribunal, in the instant case, to arrive at the conclusion that the mechanical approval under section 153D of the Act would vitiate the entire proceedings in the instant case.

17. For the reasoning given in the case of *Navin Jain (supra)*, as extracted in the impugned order passed by the Tribunal, as noted above, there cannot be any two opinion to the requirement of prior approval of the Joint Commissioner to the draft assessment order prepared by the Assessing Officer, as per the mandate of section 153D of the Income-tax Act.

18. The approval of draft assessment order being an in-built protection against any arbitrary or unjust exercise of power by the Assessing Officer, cannot be said to be a mechanical exercise, without application of independent mind by the Approving Authority on the material placed before it and the reasoning given in the assessment order. It is admitted by Sri Gaurav Mahajan, learned counsel for the appellant-revenue that the approval order is an administrative exercise of power on the part of the Approving Authority but it is sought to be submitted that mere fact that the approval was in existence on the date of the passing of the assessment order, it could not have been vitiated. This submission is found to be a fallacy, in as much as, the prior approval of superior authority means that it

should appraise the material before it so as to appreciate on factual and legal aspects to ascertain that the entire material has been examined by the Assessing Authority before preparing the draft assessment order. It is trite in law that the approval must be granted only on the basis of material available on record and the approval must reflect the application of mind to the facts of the case. The requirement of approval under section 153D is pre-requisite to pass an order of assessment or re-assessment. Section 153D requires that the Assessing Officer shall obtain prior approval of the Joint Commissioner in respect of "each assessment year" referred to in clause (b) of sub-section (1) of section 153A which provides for assessment in case of search under section 132. Section 153A(1)(a) requires that the assessee on a notice issued to him by the Assessing Officer would be required to furnish the return of income in respect of "each assessment year" falling within six assessment years (and for the relevant assessment year or years), referred to in clause (b) of sub-section (1) of section 153A. The proviso to section 153A further provides for assessment of the total income in respect of each assessment year falling within such six assessment years (and for the relevant assessment year or years).

19. The careful and conjoint reading of section 153A(1) and section 153D leave no room for doubt that approval with respect to "each assessment year" is to be obtained by the Assessing Officer on the draft assessment order before passing the assessment order under section 153A.

20. In the instant case, the draft assessment order in 38 cases, *i.e.* for 38 assessment years placed before the Approving Authority on 31-12-2017 was approved on same day *i.e.* 31-12-2017, which not only included the cases of respondent-assessee but the cases of other groups as well. It is humanly impossible to go through the records of 38 cases in one day to apply independent mind to appraise the material before the Approving Authority. The conclusion drawn by the Tribunal that it was a mechanical exercise of power, therefore, cannot be said to be perverse or contrary to the material on record.

21. As the facts are admitted before us, the questions of law framed on the factual issues related to the findings recorded by the Assessing Officer are not open to agitate within the scope of the present appeal being in the nature of second appeal. No substantial question of law arises for consideration before us.

22. The Appeal is dismissed being devoid of merit.

The Hon'ble Court thus held that the approval of draft assessment order being an in-built protection against any arbitrary or unjust exercise of power by the Assessing Officer and therefore, the same could not be a mechanical exercise without application of independent mind by the Approving Authority on the material placed before it and the reasoning given in the assessment order. The prior approval of superior authority means that it should appraise the material before it so as to appreciate on factual and legal aspects to ascertain that the entire material has been examined by the Assessing Authority before preparing the draft

assessment order. It is trite in law that the approval must be granted only on the basis of material available on record and the approval must reflect the application of mind to the facts of the case. The requirement of approval under section 153D is pre-requisite to pass an order of assessment or re-assessment. Section 153D requires that the Assessing Officer shall obtain prior approval of the Joint Commissioner in respect of "each assessment year" referred to in clause 153A(1)(b) which provides for assessment in case of search u/s 132. Section 153A(1)(a) requires that the assessee would be required to furnish the return of income in respect of "each assessment year" falling within six assessment years (and for the relevant assessment year or years), referred to in Sec.153A(1)(b). The proviso to section 153A further provides for assessment of the total income in respect of each assessment year falling within such six assessment years (and for the relevant assessment year or years). The conjoint reading of Sec.153A(1) and section 153D leave no room for doubt that approval with respect to "each assessment year" is to be obtained by the Assessing Officer on the draft assessment order before passing the assessment order u/s 153A. Similar view has been taken in various other decision of Tribunal, the copies of which have been placed on record. This being the case, the assessments for both the years stand quashed. The consequential penalties would not survive. Delving into the merits of the case has been rendered academic in nature. The assessee succeeds on legal grounds.

5. All the appeals stand allowed in terms of our above order.

Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(SATBEER SINGH GODARA)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

Dated: 28-03-2025

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT AGRA