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

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No.2566/Del/2022
Assessment Year: 2018-19

Sh. Hari Kishan Rathi, A-184, Shivalik, Malviya Nagar, New Delhi	**Vs.**	ACIT, Central Circle-14, New Delhi
PAN:AAKPK2574C		
(Appellant)		**(Respondent)**

With

ITA No.2822/Del/2022
Assessment Year: 2018-19

DCIT, Central Circle-14, New Delhi	**Vs.**	Sh. Hari Kishan Rathi, A-184, Shiwalik, Malviya Nagar, New Delhi
		PAN:AAKPK2574C
(Appellant)		**(Respondent)**

Assessee by	Sh. Mayank Patawari, Adv.
Department by	Sh. Surender Pal, CIT(DR)

Date of hearing	08.04.2025
Date of pronouncement	08.04.2025

ORDER

PER SATBEER SINGH GODARA, JM

These assessee's and Revenue's cross appeals ITA Nos. 2566/Del/2022 and 2822/Del/2022 for assessment year 2018-19 are directed against the Commissioner of Income Tax (Appeals)-31,

New Delhi's order dated 12.09.2022 passed in case no 657/20-21, involving proceedings under section 143(3) r.w.s. 153A of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Heard both the parties. Case files perused.

3. It emerges at the outset that the assessee herein canvassing his first and foremost legal ground seeking to annul the impugned section 153A r.w.s. 143(3) assessment framed on 31st December, 2019 for want of invalid approval under section 153D of the Act.

4. Faced with this situation, learned CIT(DR) has filed detailed written submission vehemently contesting the assessee's legal arguments as under:

> *"Sub: Written Submission in the Appeal of Hari Kishan Rathi, having ITA Nos. 2566 & 2822/Del/2022, A.Y. 2018-19, on the legal ground of validity of Administrative Approval u/s 153D granted by the JCIT/AddI. CIT-reg.*
>
> *In the above case, it is respectfully submitted that in addition to the detailed 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 such Administrative Orders/ approvals/sanctions 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/AddI. 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/AddI. 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 / approval / sanctions, the Hon. Supreme Court has given many comprehensive judgments, three of which are enclosed and the relevant portions/parts are quoted as under for kind consideration:-*

(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 concemed 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.

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 injustice but such a decision must have led to manifest

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 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. dismissed 1 stands

(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.

> *The order of the Addl./Joint CIT u/s 153D does not suffer from any illegality or irrationality or procedural impropriety. Therefore, the above order / sanction / approval u/s 153D may kindly be upheld. Submitted for kind consideration of the Hon'ble Bench."*

5. We have given our thoughtful consideration to the assessee's and the Revenue's respective vehement contentions regarding the first and foremost issue of validity of the impugned assessment as lacking valid approval under section 153D of the Act. The assessee's paper-book dated 19.01.2024 at pages 1 & 2 has filed the learned prescribed authority's common approval granted in 28 cases. Various landmark precedents i.e. PCIT Vs. Shiv Kumar Nayyar (2024) 467 ITR 186 (Del.), PCIT Vs. Anuj Bansal (2024) 466 ITR 254 (SC) and PCIT Vs. MDLR Hotels (P.) Ltd. (2024) 166 taxmann.com 327 (Del.) PCIT Vs. Shiv Kumar Nayyar (2024) 467 ITR 186 (Del.) have already settled the issues in assessee's favour and against the department that such an approval under section 153D has to be accorded separately for each and every assessment year even if it involves a single assessee. We thus accept the assessee's instant first and foremost legal grounds/arguments to quash the impugned assessment herein framed by the Assessing Officer on 31st December, 2019 in very terms. That being the case,

the assessee's appeal ITA No. 2566/Del/2022 succeeds and Revenue's appeal ITA No. 2822/Del/2022 fails.

All other pleadings on merits herein stand rendered academic.

6. To sum up, this assessee appeal ITA No.2566/Del/2022 is allowed and Revenue's cross appeal ITA No. 2822/Del/2022 is dismissed, in the foregoing terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 8th April, 2025

Sd/-	***Sd/-***
(M. BALAGANESH)	**(SATBEER SINGH GODARA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 8th April, 2025.
RK/-
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi