

**THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, KOLKATA**

[Before Shri Rajesh Kumar, AM & Shri Pradip Kumar Choubey, JM]

**I.T.A. No. 2257/Kol/2024**

Assessment Year: 2012-13

&

**I.T.A. No. 2315/Kol/2024**

Assessment Year: 2013-14

&

**I.T.A. No. 2303/Kol/2024**

Assessment Year: 2014-15

&

**I.T.A. No. 2316/Kol/2024**

Assessment Year: 2015-16

Rungta Irrigation Ltd. 101, Pragati Tower, 26, Rajendra Place, Delhi-110008. (PAN: AACCR0829F)	Vs.	ACIT, Central Circle-3(1), Kolkata
Appellant		Respondent

&

**I.T.A. No. 2399/Kol/2024**

Assessment Year: 2012-13

&

**I.T.A. No. 2400/Kol/2024**

Assessment Year: 2014-15

&

**I.T.A. No. 2401/Kol/2024**

Assessment Year: 2015-16

ACIT, Central Circle-3(1), Kolkata	Vs.	Rungta Irrigation Ltd. 101, Pragati Tower, 26, Rajendra Place, Delhi-110008. (PAN: AACCR0829F)
Appellant		Respondent

Date of conclusion of Hearing	17.04.2025
Date of Pronouncement	15.05.2025
For the Appellant	Shri Devesh Poddar, AR
For the Respondent	Shri Sailen Samadder, Addl. CIT, Sr. DR

**ORDER**

**Per Shri Rajesh Kumar, AM**

All these captioned four appeals filed by the assessee and the three appeals filed by the revenue are against the orders of Ld. CIT(A), Kolkata-21 dated 19.09.2024 for AYs 2012-13 to 2015-16 arising out of assessment orders passed u/s. 147/143(3) of the Income Tax Act, 1961 (hereinafter referred to as the "Act") by the ACIT, CC-3(1), Kolkata.

**First, we take up ITA No. 2257/Kol/2024**

2. The issues raised in ground nos. 1 and 2 are against the order of Ld. CIT(A) upholding the assessment framed u/s. 147/143(3) of the Act dated 26.12.2019 by ignoring the fact that the proceedings initiated u/s. 148 of the Act was itself ab initio void as there was no valid approval from the Ld. Pr. CIT u/s. 151 of the Act.

3. Brief facts of the case are that the assessee filed the return of income on 28.09.2012 declaring total income at Rs.1,75,03,350/-. The case of the assessee was selected for scrutiny and assessment was framed u/s. 143(3) of the Act on 30.03.2015 accepting the returned income. Thereafter, a search and survey operation was conducted on Rungta Group on 28.05.2015 by the Investigation Directorate, Kolkata. Though the assessee was not covered under the said search, the Assessing Officer after considering the facts of the case and statement recorded on oath of Shri M. P. Rungta and impounded seized documents from survey premises at 107, Pragati Towers, 26 Rajendra Place, New Delhi-110008 which was also subjected to survey operation u/s. 133A. Besides, the assessee was also subjected to survey operation u/s. 133A at 107, Pragati Towers, 26 Rajendra Place, New Delhi-110008. The Assessing Officer found that though the assessee claimed that the impounded material did not belong to the assessee but since the assessee failed to explain the same and there was no compliance to the proceedings u/s. 148 of the Act, the Assessing Officer framed the assessment on the basis of the material available. It is pertinent to state that the case of the assessee was reopened u/s. 148 of the Act after getting approval u/s. 151 of the Act from Pr. CIT, Central Kolkata-2 and notice u/s. 148 of the Act was issued on 28.03.2019 to the assessee which was duly served upon him. The assessee also did not file any return of income within the time prescribed in the notice. However, the return was filed on 07.12.2019 declaring total

income at Rs.1,75,03,350/- thereafter statutory notices were duly issued and served on the assessee along with the questionnaire. The assessee was not fully compliant during the assessment proceedings. Finally, the assessment was framed vide order dated 26.12.2019 assessing the total income at Rs.6,40,56,010/- making two additions – (i) on account of undisclosed income of Rs.3,45,57,465/- and (ii) on account of undisclosed investment of Rs.1,19,95,195/-.

4. In the appellate proceeding, the assessee did challenge the validity of assessment proceeding u/s. 143 on the ground of borrowed satisfaction. However, the issue of invalid approval u/s. 151 of the Act was not there and was raised for the first time before us.

5. The Ld. AR vehemently submitted before us that the proceeding u/s. 147 r.w.s. 148 of the Act was invalidly initiated as there was no valid approval accorded by the Ld. Pr. CIT u/s. 151 of the Act. The Ld. AR while referring to page nos. 9 and 10 of the paper book which contained the copy of approval granted by the Ld. Pr. CIT, submitted that in para 13 of the said approval, the Ld. Pr. CIT stated that “Yes, I am satisfied. May be reopened.” The Ld. AR, therefore, submitted that this is in fact no approval granted by the Ld. Pr. CIT for reopening of assessment. The Ld. AR further argued that the Ld. Pr. CIT before granting approval has to record his satisfaction that it is fit case for reopening and mere mentioning that may be reopened showed that the Ld. Pr. CIT was not fully satisfied and, therefore, has not used the sentence that “I am satisfied” and it is a fit case for issuance of notice. The Ld. AR also made detailed argument on the distinction between the words “may” and “shall” and pointed out that the “may” denotes the discretion of the authority whereas the “shall” denotes the mandatory requirement which has to be followed. However, the Ld. Pr. CIT while granting the approval used the phrase “may be reopened” which means that the issuance of notice was left at the discretion of the Assessing Officer. The Ld. AR vehemently argued that in absence of any satisfaction of the higher authorities i.e. Ld. Pr. CIT no notice u/s. 148 could have been issued. The Ld. AR further submitted that the Income Tax Act itself provides interpretation of the word “may and “shall” in the different provisions contained in the said Act by referring that whether the same is discretionary or mandatory. The Ld. AR referred to

the words of section 151 of the Act which states that no notice u/s. 148 of the Act shall be issued by an Assessing Officer without the approval of competent authority which means that sanction of the competent authority is mandatory and any notice without such sanction would be invalid. The Ld. AR thereafter referred to the penalty provisions as contained in section 271, 271A, 271AAA, 271AAB and 271AAC etc. where the legislature has used the word “may” stated that the Assessing Officer may impose or forward penalty meaning thereby that legislature has given a discretion to the Assessing Officer. The Ld. AR, therefore, prayed that the literal rule of interpretation has to be followed for interpretation of the provisions of the Act. In defense of his argument, the Ld. AR relied on a series of decisions namely, in the case of Vidarbha Industries Power Ltd. Vs. Axis Bank Limited, Civil Appeal No. 4633 of 2021 dated 12.07, 2022 (SC), State of Kerala & Ors. Vs. Kandath Distilleries dated 22.02.2013, Civil Appeal No. 1642 of 2013 (SC). The Ld. AR submitted that it is apparent from the above two decisions that “may” apply at the discretion of the competent authority and not at the satisfaction of the higher authorities and same is not mandatory or obligatory. The Ld. AR submitted that the Ld. Pr. CIT has vested with the power to be satisfied and only after having recorded his satisfaction accord approval for issuance of notice u/s. 148 of the Act.

6. The Ld. AR submitted that, therefore, granting of approval by stating that “may be reopened” by no means can be constituted that Ld. Pr. CIT has applied his mind and granted approval in an authority and mandatory manner. The Ld. AR submitted that it is a well settled law that the words/provisions have to be interpreted in a literal manner and same cannot be decided or turned change the meaning. The Ld. AR in defense of his argument referred to the case of B. Premannand & Ors. Vs. Mohan Koikal & Ors., Civil Appeal No. 2684 of 2007 dated 16.03.2011 (SC). Finally, the Ld. AR submitted that the approval accorded by the Ld. Pr. CIT is invalid and so the proceeding initiated u/s. 148 of the Act may kindly be quashed.

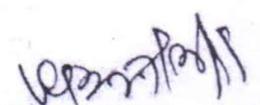
7. The Ld. DR, on the other hand, relied heavily on the sanction accorded u/s. 151 of the Act by the Ld. Pr. CIT and consequent initiation of proceeding u/s. 148 of the Act. The Ld. DR submitted that the file for approval has to pass through the various stages in the hierarchy

and then finally reaches the authority which is to grant the approval. Similarly, in this case also first the Assessing Officer moved the file to the Ld. DCIT, CC-3(1), Kolkata and then it was placed before the Addl. CIT (C), Range-3, Kolkata who stated that considering the facts of the case and reason recorded by the Assessing Officer I am satisfied that it is a fit case for issuance of notice u/s. 148 subject to the approval by Ld. Pr. CIT, C-2, Kolkata and thereafter, it reached the final authority who granted the approval i.e. the ld. Pr. CIT, Central, Kolkata-2 had rightly stated that “Yes, I am satisfied. May be reopened” which is valid and thereafter the assessee cannot be allowed to question the same. By finding the miniscule and an insignificant coverage in the wording used by the authorities the Ld. DR, therefore, prayed that the ground raised by the assessee may be dismissed.

8. After hearing both the parties and perusing the material on record we find that in this case the case of the assessee was reopened u/s. 147 after obtaining approval of the competent authority which is Pr. CIT and thereafter, notice u/s. 148 was issued on 28.03.2019. The counsel for the assessee has challenged the validity of the proceedings u/s. 147 r.w.s. 148 of the Act on the ground that the approval granted by the competent authority i.e. ld. Pr. CIT u/s. 151 of the Act is invalid. The proceedings u/s. 147 r.w.s. 148 of the Act for the sake of ready reference is extracted below:

**Form for recording the reasons for initiating proceedings under Section 148 and for obtaining the approval of the Pr  
 Commissioner / Additional Commissioner of Income-tax/Central Board of Direct Taxes**

1	Name and address of the assessee :	Rungta Irrigation Ltd
2	Permanent Account No :	PAN:AAACR0829F
3	Status :	Company
4	District/Circle/Range :	Central Circle-3(1)/ Range-3 (Central), Kolkata
5	Assessment year in respect of which it is proposed to issue notice u/s.148 :	2012-13
6	The quantum of income which has escaped assessment :	Rs 43,19,63,692/-
7	Whether the main provision of section 147 or its first proviso is applicable.	The first proviso of provision of section 147 is applicable.
8	Whether the assessment proposed to be made for first time. If the reply is in the affirmative please state :  (a)Whether any voluntary return had already been filed; and  (a) If so, the date of filing the said return  (b) Whether it is a case where no return of income has been furnished by the assessee although total income exceeded the basic exemption limit.	No  Yes  28.09.2012
9	If the answer to item '8' is in the negative please state :  (a)The income originally assessed  (b)Whether assessee has failed to furnish a report in respect of any international transaction which he was required u/s 92E.  (c)Whether it is a case of under assessment, assessment at too low rate, assessment which has, been made the subject of excessive relief or allowing of excessive loss or depreciation  (d)Whether the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return furnished in response to notice u/s 133C.	1,75,03,350/-  Underassessment.

	(e) Whether the assessee is found to have any asset (including financial interest in any entity) located outside India.	
10	Whether the provisions of Sec. 150(1) are applicable. If the reply is in the affirmative, the relevant facts may be stated against item No. 9 and it may also be brought out that the provisions of Sec.150(2) would not stand in the way of initiating proceedings u/s 147:	Not applicable.
11	Reasons for the belief that income has escaped assessment.  Dated .....	As per separate sheet. (Annex-"A")   (ABHISHEK DEVAL) DCIT CC-3(1)Kolkata
12	Whether the Addl. CIT/ Joint CIT is satisfied on the reasons recorded by the Assessing Officer that it is a fit case for the issue of a notice u/s 148.  Dated .....	Considering the facts of the case and the reasons recorded by the AO, I am satisfied that it is a fit case for issue of notice u/s 148 subject to approval by PCIT, C-2, Kol.   (P N BARNWAL) Addl. CIT (C)Range-3,Kolkata
13	Whether the Pr Commissioner / Commissioner/ Board is satisfied on the reasons recorded by the ITO/IAC (A) that is a fit case for the issue of a notice u/s 148.  Dated .....	Yes, I am satisfied. May be reopened.   (K C P PATNAIK) Pr. CIT(Central)Kol-2,Kolkata

9. A perusal of para 13 of the said form regarding the reason u/s. 148 for obtaining approval of Ld. Pr. CIT states that while granting approval the Ld. Pr. CIT has mentioned “Yes, I am satisfied. May be reopened”, which means that the Ld. Pr. CIT while granting the approval has left the issuance of notice u/s. 148 to the discretion of the Assessing Officer as he has stated that “may be reopened”. We have also perused the provisions of section 147/148 of the Act and observe that in this case if the Assessing Officer is of the opinion that any income has escaped assessment then he may subject to the provisions of sec. 148 to 153 assess/reassess the income. Section 148 deals with the issuance of notice whereas section 151 of the Act deals with the competent authority who would be granting approval to the Assessing Officer in initiating the proceedings u/s. 147 of the Act. A careful perusal of section 148 would reveal that the word ‘shall’ has been used and, therefore, there is no discretion left with the assessee. In other words, where the income has escaped, according to the Assessing Officer, then the Assessing Officer has to record the reason placed before the appropriate authority in the hierarchy and has to obtain the permission and shall issue notice u/s. 148, therefore, there is no discretion left with the Assessing Officer. In our opinion, the competent authority has to record his satisfaction and then approval for issuance of notice in definitive language/words and use the words that ‘Yes, I am satisfied and may be reopened’ in contravention with the origin of the Act. We have also perused the decision of Hon’ble Apex Court to draw support while deciding this case as to distinguish between the words ‘may’ and ‘shall’. In the case of Vidarbha Industries Power Ltd. (supra) the Hon’ble Apex court has clarified the rule of interpretation and used the words ‘may’ and ‘shall’ by holding and observing as under:

*“64. Ordinarily the word "may" is directory. The expression 'may admit' confers discretion to admit. In contrast, the use of the word "shall" postulates a mandatory requirement. The use of the word "shall" raises a presumption that a provision is imperative. However, it is well settled that the prima facie presumption about the provision being imperative may be rebutted by other considerations such as the scope of the enactment and the consequences flowing from the construction.*

*65. It is well settled that the first and foremost principle of interpretation of a statute is the rule of literal interpretation, as held by this Court in Lalita Kumari v. government of Uttar Pradesh and Ors. If section 7(5)(a) of the IBC is construed literally the provision must be held to confer a discretion on the Adjudicating Authority (NCLT).*

*66. In Hiralal Rattanlal v. State of Uttar Pradesh 5, this Court held :-*

*"22. ... In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear. "*

67. *In B. Premanand v. Mohan Koikal 6, this Court held:-*

*"9. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide Swedish Match AE v. SEEI [(2004) 11 SCC 641J. "*

*76. The fact that Legislature used 'may' in Section 7(5)(a) of the IBC but a different word, that is, 'shall' in the otherwise almost identical provision of Section 9(5)(a) shows that 'may' and 'shall' in the two provisions are intended to convey a different meaning. It is apparent that Legislature intended Section 9(5)(a) of the IBC to be mandatory and Section 7(5)(a) of the IBC to be discretionary."*

10. Similarly, in the case of State of Kerala & Ors. Vs. Kandath Distilleries (supra), the Hon'ble Apex court has discussed the difference between the discretionary and mandatory powers so as to interpret the use of word 'may' in the provision as under:

*"25. Discretionary power implies freedom of choice, a competent authority may decide whether or not to act. The legal concept of discretion implies power to make a choice between alternative courses of action (Discretionary Justice Davis 1969). Statute has conferred discretionary power on the Commissioner and State Government but not discretion coupled with duty because they are dealing with a subject matter on which State has exclusive privilege. Permissive language used by the Statute in Section 14 and the rule making authority in Rule 4 gives the State Government and the Commissioner, no mandatory duty or obligation to grant the licence except perhaps to consider the application, if the liquor policy permits so.*

*26. Section 14 uses the expression "Commissioner may", "with the approval of the Government" so also Rule 4 uses the expressions "Commissioner may", "if he is satisfied" after making such enquiries as he may consider necessary "licence may be issued". All those expressions used in Section 14 and Rule 4 confer discretionary powers on the Commissioner as well as the State Government, not a discretionary power coupled with duty."*

11. Thus, we find from the perusal of the aforesaid decision that the word 'may' implies the discretion by the competent authority and not the satisfaction and the same is not mandatory or obligatory. Likewise, in the instant case before us, the Ld. Pr. CIT has been vested with the powers to satisfy him then grant approval for issuance of notice u/s. 148 of the Act. We observe from the format of approval placed before us that Ld. Pr. CIT by stating

that 'may be reopened' has casually acted in this matter without application of mind and it amounts to non-authoritative and non-mandatory direction to the Assessing Officer. In our opinion, the provisions of the Act have to be interpreted under the literal sense without waste or turning to change the meaning thereof. We find that in the Income Tax Act the words 'may' and 'shall' have been used in the different sections connoting different meaning. In this case, the Ld. Pr. CIT while granting the approval has used the word 'may' which contained that this decision of the Assessing Officer to issue the notices. So far as the literal interpretation of statute is concerned, we draw strength from the decision of the Hon'ble Apex Court in the case of B. Premannand & Ors. Vs. Mohan Koikal & Ors. (supra), wherein the Hon'ble Apex Court while interpreting the Rule of Interpretation has held as under:

*"It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide Swedish Match AB vs. Securities and Exchange Board, India, AIR 2004 SC 4219. As held in Prakash Natb Khanna vs. Cd. T. 2004 (9) SCC 686, the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency, vide Delhi Financial Corporation vs. Rajiv Anand 2004 (11) SCC 625. Where the legislative intent is clear from the language, the Court should give effect to it, vide Government of Andhra Pradesh vs. Road Rollers Owners Welfare Association 2004(6) see 210, and the Court should not seek to amend the law in the garb of interpretation.*

*As observed by Lord Granworth in Grundy v. Pinniger, (1852) 1 LJ Ch 405:*

*"To adhere as closely as possible to the literal meaning of the words used, is a cardinal rule from which if we depart we launch into a sea of difficulties which it is not easy to fathom."*

*In other words, once we depart from the literal rule, then any number of interpretations can be put to a statutory provision, each Judge having a free play to put his own interpretation as he likes. This would be destructive of judicial discipline, and also the basic principle in a democracy that it is not for the Judge to legislate as that is the task of the elected representatives of the people. Even if the literal interpretation results in hardship or inconvenience, it has to be followed (see G.P. Singh's Principles of Statutory Interpretations, 9th Edn. pp 45- 49). Hence departure from the literal rule should only be done in very rare cases, and ordinarily there should be judicial restraint in this connection.*

*As observed by this Court in CIT vs. Keshab Chandra Mandal; AIR 1950 SC 265:*

*"Hardship or inconvenience cannot alter the meaning of the language employed by the Legislature if such meaning is clear on the face of the statute".*

*In Union of India and another vs. Hansoli Devi and others 2002 (7) SCC (vide para 9), this Court observed:*

*"It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the grounds that such construction is more consistent with the alleged object and policy of the Act."*

12. Therefore, it is apparent from the above that a rule of interpretation i.e. to be followed for interpretation of statute is literal rule and the word 'shall' cannot be changed for 'may'. Therefore, we are of the view that sanction accorded by the Ld. Pr. CIT for issuance of notice u/s. 148 of the Act is not a valid approval in terms of section 151 of the Act and accordingly, the reassessment proceeding passed on the invalid approval are itself invalid and accordingly quashed.

***ITA No. 2315/Kol/2024 for Assessment Year 2013-14***

13. We have quashed the reassessment proceeding in ITA No. 2257/Kol/2024 for AY 2012-13 which was passed on the invalid approval. In this appeal also, we apply the result of AY 2012-13 mutatis mutandis and quashed the reassessment proceeding passed on the invalid approval.

***ITA No. 2303/Kol/2024***

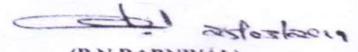
14. The issue raised in ground no. 1 is against the invalid proceeding u/s. 147 r.w.s. 148 of the Act. Facts in brief are that the assessee filed the return of income on 30.09.2014 declaring total income of Rs.11,55,77,160/-. The other facts qua this year are also identical so far as the search on Rungta Group of Companies are concerned and survey conducted thereafter u/s. 133A on the assessee and other parties. The Assessing Officer issued notice u/s. 148 of the Act on 28.03.2019 which was not complied with by the assessee. Thereafter, the assessee vide letter dated 09.11.2019 was again requested to file the return of income and assessee finally filed the return on 07.12.2019 disclosing the total income of Rs. 1,75,03,350/-. The assessee has raised the legal issue before us challenging the reopening of the assessment

u/s. 147 r.w.s. 148 of the Act on the ground that the approval granted u/s. 151 is not a proper approval, copy whereof is available at pages 13 and 14 of the paper book filed on 13.02.2025. We note that the Ld. JCIT in para 12 has just put his signature to a pre-printed satisfaction note put before him by the Assessing Officer who is DCIT, CC-3(1), Kolkata. For the sake of ready reference the said approval is extracted below:

**Form for recording the reasons for initiating proceedings under Section 148 and for obtaining the approval of the Pr Commissioner / Additional Commissioner of Income-tax/Central Board of Direct Taxes**

1	Name and address of the assessee :	Rungta Irrigation Ltd
2	Permanent Account No :	PAN:AAACR0829F
3	Status :	Company
4	District/Circle/Range :	Central Circle-3(1)/ Range-3 (Central), Kolkata
5	Assessment year in respect of which it is proposed to issue notice u/s.148 :	2014-15
6	The quantum of income which has escaped assessment :	Rs 104,14,05,310/-
7	Whether the main provision of section 147 or its first proviso is applicable.	The main provision of section 147 is applicable.
8	Whether the assessment proposed to be made for first time. If the reply is in the affirmative please state :  (a) Whether any voluntary return had already been filed; and (a) If so, the date of filing the said return  (b) Whether it is a case where no return of income has been furnished by the assessee although total income exceeded the basic exemption limit.	Yes  Yes  30.09.2014
9	If the answer to item '8' is in the negative please state :  (a) The income originally assessed  (b) Whether assessee has failed to furnish a report in respect of any international transaction which he was required u/s 92E.  (c) Whether it is a case of under assessment, assessment at too low rate, assessment which has, been made the subject of excessive relief or allowing of excessive loss or depreciation  (d) Whether the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return furnished in	NA

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	response to notice u/s 133C. (e) Whether the assessee is found to have any asset (including financial interest in any entity) located outside India.	
10	Whether the provisions of Sec. 150(1) are applicable. If the reply is in the affirmative, the relevant facts may be stated against item No. 9 and it may also be brought out that the provisions of Sec.150(2) would not stand in the way of initiating proceedings u/s 147:	Not applicable.
11	Reasons for the belief that income has escaped assessment.  Dated .....	As per separate sheet. (Annex-"A")   (ABHISHEK DEVAL) DCIT CC-3(1)Kolkata
12	Whether the Addl. CIT/ Joint CIT issatisfied on the reasons recorded by the Assessing Officer that it is a fit case for the issue of a notice u/s 148.  Dated .....	Considering the facts of the case and the reasons recorded by the AO, I am satisfied that it is a fit case for issue of notice u/s 148. Approved.   (P N BARNWAL) Addl. CIT (C)Range-3,Kolkata

15. We note that the Addl. CIT (C) Range-3, Kolkata has just put his signature in front of column no. 12 which is a pre-printed note placed before him by the Assessing Officer meaning thereby that there was no independent application of mind while recording satisfaction by the competent authority. In other words, the satisfaction cannot be borrowed or done mechanically the competent authority has to apply is mind to the facts placed before him by the AO and only after recording an objective satisfaction he has to give the approval. We observe from the said approval that not a single word has been mentioned by JCIT while granting approval, therefore, we find merit in the contention of the assessee that the approval has been granted mechanically and without any independent satisfaction of the competent authority. We also note that in AY 2015-16, the same ditto copy of the formation of reasons for initiating the proceeding u/s. 148 of the Act for obtaining approval of JCIT© Range-3, Kolkata was placed for approval, therefore, we are inclined to hold that the approval granted by the Addl. CIT (C), Range-3, Kolkata is not in accordance with law, the provisions of the

Act as the same has been given without any independent satisfaction and application of mind, therefore, we are inclined to quash the same. We find support while drawing the conclusion from the decision of the Hon'ble Delhi High Court in the case of CIT Vs. SPL's Siddhartha Ltd. 345 ITR 223 (Del.) and SBC Minerals P. Ltd. s. ACIT [2024] 167 taxmann.com 113 (Del.). The operative part of the decision in the case of the CIT Vs. SPL's Siddhartha Ltd. (supra) is extracted as under:

*“Sanction for issue of notice - Assessment year 2002-03 - Whether when a particular authority has been designated to record his/her satisfaction on any particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction and satisfaction so recorded should be 'independent' and not 'borrowed' or 'dictated' satisfaction - Held, yes*

*Thus, if authority is given expressly by affirmative words upon a defined condition, the expression of that condition excludes the doing of the Act authorised under other circumstances than those as defined. It is also established principle of law that if a particular authority has been designated to record his/her satisfaction on any particular issue, then it is that authority alone who Should apply his/her independent mind to record his/her satisfaction and further mandatory condition is that the satisfaction recorded should be "independent" and not "borrowed" or "dictated" satisfaction. Law in this regard is now well-settled.*

*The Apex Court in the case of Anirudb Sinhji Karan Sinhji Jadeja v. State of Gujarat [J995] 5 SCC 302 has held that if a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If discretion is exercised under the direction or in compliance with some higher authorities instruction, then it will be a case of failure to exercise discretion altogether.”*

16. Similarly, in the case of SBC Minerals P. Ltd. (supra), the Hon'ble Delhi High Court has held as under:

*“13. It is a trite law that the grant of approval is neither an empty formality nor a mechanical exercise. The Competent Authority must apply its mind independently on the basis of material placed before it before grant of sanction.”*

17. It is well settled law that sanction u/s. 151 is not a mere formality and power vested with the competent authority is to be exercised judiciously that Hon'ble Delhi High Court in the case of Central India Electric Supply Co. Ltd. Vs. ITO, [2011] 333202 Taxman 86 (Del.), wherein the Hon'ble High Court while dealing with the similar issue has held as under:

*“Whether even if CBDT agrees upon reasoning set out by ITO for reopening assessment, least, which is expected, is that an appropriate endorsement is made in this behalf setting out brief reasons; mere rubber stamping of underlying material would suggest that there was no application of mind and decision had been taken in a mechanical manner - held, yes*

*In respect of the first plea, if the judgments in Chugamal Rajpal's case (supra); Chanchal Kumar Chatterjee's case (supra); and Govinda Choudhury & Sons' case (supra) are examined, the absence of reasons by the Assessing Officer does not exist. This is so as along with the proforma, reasons set out by the Assessing Officer were, in fact, given. However, in the instant case, the manner in which the proforma was stamped amounting to approval by the Board leaves much to be desired. It is a case where literally a mere stamp is affixed. It is signed by a Under Secretary underneath a stamped 'Yes' against the column which queried as to whether the approval of the Board had been taken. Rubber stamping of underlying material is hardly a process which can get the imprimatur of this Court as it suggests that the decision has been taken in a mechanical manner. Even if the reasoning set out by the ITO was to be agreed upon, the least, which is expected, is that an appropriate endorsement is made in this behalf setting out brief reasons. Reasons are the link between the material placed on record and the conclusion reached by an authority in respect of an issue, since they help in discerning the manner in which conclusion is reached by the concerned authority. Our opinion is fortified by the decision of the Apex Court in Union of India v. ML Capoor AIR 1974 SC 87 wherein it was observed as under :-*

*"27 .... We find considerable force in the submission made on behalf of the respondents that the "rubber-stamp" reason given mechanically for the supersession of each officer does not amount to "reasons for the proposed supersession". The most that could be said for the stock reason is that it is a general description of the process adopted in arriving at a conclusion ....*

*28 .... If that had been done, facts on service records of officers considered by the Selection Committee would have been correlated to the conclusions reached. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable .... "*

*[Emphasis supplied]*

*This is completely absent in the present case. Thus, we find force in the contention of learned counsel for the appellant that there has not been proper application of mind by the Board and if a proper application had taken place, there would have been no reason to re-open the closed chapter in view of what we are setting out hereinafter."*

18. The Hon'ble Delhi High court in the case of Capital Broadways (P) Ltd. Vs. ITO [2024] 167 taxmann.com 533 (Del.) while dealing with the issue of according the approval u/s 151 has held as under:

*"The prescribed authority referred to in section 151 must be "satisfied" on the reasons recorded by the Assessing Officer that it is a fit case for the issuance of such notice and therefore the satisfaction of the prescribed authority is a sine qua non for a valid approval. The competent authority must apply its mind independently on the basis of material placed before it before grant of the sanction. [Para 10]*

*It is noted that request for approval under section 151 in a printed format was placed before the Assistant Commissioner, who after according his satisfaction, placed the same before the Principal Commissioner. The Principal Commissioner granted the approval on the very same day. [Para 12].*

*The satisfaction arrived at by the concerned Officer should be discernible from the sanction order passed under section 151. However, as may be seen, the approval order is bereft of any reason. There is no whisper of any material that may have weighed for the grant of approval. [Para 13 J*

*Even the bare minimum requirement of the approving authority having to indicate what the thought process was, is missing in the aforementioned approval order. While elaborate reasons may not have been given, at least there has to be some indication that the approving authority has examined the material prior to granting approval. Mere appending the expression 'Yes I am satisfied' says nothing. The entire exercise appears to have been ritualistic and formal rather than meaningful, which should be the rationale for the safeguard of an approval by a high ranking official. Reasons are the link between material placed on record and the conclusion reached by the authority in respect of an issue, since they help in discerning the manner in which the conclusion is reached by the concerned authority. [Para 14]*

*Mere repeating of the words of the statute, mere rubber stamping of the letter seeking sanction or using similar words like 'Yes, I am satisfied' will not satisfy the requirement of law. [Para 18]*

*Mere repeating of the words of the statute, mere rubber stamping of the letter seeking sanction or using similar words like 'Yes, I am satisfied' will not satisfy the requirement of law. Hence, it is viewed that Principal Commissioner has failed to satisfactorily record his concurrence. The mere use of expression 'Yes, I am satisfied' cannot be considered to be a valid approval as the same does not reflect an independent application of mind. The grant of approval in such manner is thus flawed in law. [Para 20]."*

19. Therefore, considering the ratios laid down in the above decision, we are of the view that the approval u/s. 151 is not a formality which can be done by simply affixing the signature of the competent authority rather the same has to be accorded by the competent authority after due application of mind and has to be exercised judiciously after recording independent satisfaction and application of mind. Therefore, considering the facts of the case before us and in the light of the various decisions cited supra, we are inclined to quash the reopening of assessment on the ground of invalid approval granted by the competent authority u/s. 151 of the Act.

#### **ITA Nos. 2316/Kol/2024 for AY 2015-16**

20. The assessee has challenged the reopening of assessment u/s. 147 read with sec. 148 of the Act on the ground of invalid approval granted u/s. 151 of the Act by the competent authority being JCIT.

21. The facts in brief are that the case of the assessee was reopened u/s. 147 by issuing notice u/s. 148 of the Act on 20.03.2020 which was complied with by the assessee by filing

return of income on 08.09.2020 disclosing total income at Rs.1,27,03,820/-. The other facts qua the search and survey are same as has been narrated in the earlier assessment year (supra). The assessee has challenged the reopening of assessment on the ground of invalid approval u/s. 151 of the Act, which is available at page 15 and 16 of the paper book and is extracted below for the sake of ready reference.

Form for recording the reasons for initiating proceedings under Section 148 and for obtaining the approval of the Principal Commissioner / Additional Commissioner of Income-tax/Central Board of Direct Taxes

1	Name and address of the assessee :	Rungta Irrigation Ltd
2	Permanent Account No :	PAN:AAACR0829F
3	Status :	Company
4	District/Circle/Range :	Central Circle-3(1)/ Range-3 (Central), Kolkata
5	Assessment year in respect of which it is proposed to issue notice u/s.148 :	2015-16
6	The quantum of income which has escaped assessment :	Rs1,25,11,39,605/-
7	Whether the main provision of section 147 or its first proviso is applicable.	The first proviso provision of section 147 is applicable.
8	Whether the assessment proposed to be made for first time. If the reply is in the affirmative please state :  (a) Whether any voluntary return had already been filed; and  (a) If so, the date of filing the said return  (b) Whether it is a case where no return of income has been furnished by the assessee although total income exceeded the basic exemption limit.	No  Yes  30.09.2015
9	If the answer to item '8' is in the negative please state :  (a) The income originally assessed  (b) Whether assessee has failed to furnish a report in respect of any international transaction which he was required u/s 92E.  (c) Whether it is a case of under assessment, assessment at too low rate, assessment which has been made the subject of excessive relief or allowing of excessive loss or depreciation  (d) Whether the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return furnished in response to notice u/s 133C.	Rs. 1,26,77,24,652/-



hearing of the appeal requested the Bench to get a clarification on this issue. Accordingly, the case record was called.

23. On the next date of hearing the file was placed before us, the record of file and register were placed before us and was duly examined. We find that in the assessment file folder a blank approval as extracted above was available. However, at the same time, another copy was also available which was sent by the competent authority but this was a photo copy and not the original copy available, therefore, considering the facts before us and conflicting records and absence of any ordinary approval available in the assessment folder, we have to draw an adverse inference against the revenue and inclined to hold that which is a valid approval granted by the competent authority. Consequently, from Sl. No. 7 of the same approval granted which states that “whether the main provisions of sec. 147 or its first proviso is applicable, we note that it has been mentioned that the first proviso of section 147 is applicable which is against a totally non-application of mind by the Assessing Officer as well as the competent authority. The first proviso to section 147 provides that bear assessment has been framed u/s. 143(3) and then the reopening of assessment can only be made from the period of four years if the escapement of income is attributed to the failure of the assessee and disclosed fully and truly all material facts necessary for the assessment and not otherwise. We note that the assessee falls within the main provisions of sec. 147 and not under the first proviso. In this case, the four years have not elapsed from the end of assessment year when the four years have not elapsed from the end of the relevant assessment year as the notice was issued on 20.03.2020, therefore, the main provisions were applicable and not the first proviso. Thus, it is apparent that the Assessing Officer as well as the competent authority while granting the approval has opted in undue haste without adhering to the provisions of the act and without proper application of mind. Even on this ground, the reopening of assessment is bad in law and cannot be sustained. The appeal of the assessee is allowed on technical ground.

24. Since we have allowed the appeal of the assessee only on legal issue in ITA Nos. 2257/Kol/2024, 2303/Kol/2024, 2315/Kol/2024 and 2316/Kol/2024, the appeal filed by the

revenue in ITA Nos. 2399/Kol/2024 for AY 2012-13, ITA No. 2400/Kol/2023 for AY 2014-15 and 2401/Kol/2024 for AY 2015-16 become infructuous and are accordingly dismissed.

25. In the result, all the appeals of the assessee are allowed and all the appeals of the revenue stand dismissed.

Order is pronounced in the open court on 15th May, 2025

Sd/-

Sd/-

(Pradip Kumar Choubey)  
Judicial Member

(Rajesh Kumar)  
Accountant Member

Dated: 15th May, 2025

*JD, Sr. PS*

Copy of the order forwarded to:

1. Appellant–Rungta Irrigation Ltd.
2. Respondent – DCIT, circle-3(1), Kolkata.
3. CIT(A), Kolkata-21
4. Pr. CIT
5. DR, ITAT, Kolkata,  
True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Bench, Kolkata