

IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH (Virtual) JODHPUR

BEFORE DR. MITHA LAL MEENA, HON'BLE ACCOUNTANT MEMBER  
AND DR. S. SEETHALAKSHMI, HON'BLE JUDICIAL MEMBER

ITA No. 903/Jodh/2024 (A.Y. 2018-19)

ITA No. 904/Jodh/2024 (A.Y. 2019-20)

ITA No. 916/Jodh/2024 (A.Y. 2017-18)

Pradeep Heda, 1A, Babel Ki Bari, Govind Nagar, Sector No.-13, Udaipur- 313001. PAN No. AAIPH2617J	Vs.	ACIT/DCIT, Central Circle-1, Udaipur.
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ITA No. 915/Jodh/2024  
(Assessment Year 2017-18)

Sunita Heda 1A, Babel Ki Bari, Govind Nagar, Sector No.-13, Udaipur- 313001. PAN No. AAMPH3169D	Vs.	ACIT/DCIT, Central Circle-1, Udaipur.
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Assessee by	Shri M.S. Jhanwar, C.A.
Revenue by	Shri Sanjay Dhariwal, CIT-DR.
Date of Hearing	07.05.2025.
Date of Pronouncement	24.06.2025.

ORDER

DR. MITHA LAL MEENA, A.M.:

These four appeals by the assesses are directed against the separate order of the Commissioner of Income Tax, Appeal CIT (A), Udaipur-2 (hereinafter referred to as the "CIT appeal"). These appeals were interlinked to each other



on similar facts and therefore, these were heard together and adjudicated by this consolidated order for sake of brevity.

2. The assessee has raised common issue son similar facts except variation in quantum addition in all the form of appeal in ITA Nos. ITA No. 903/Jodh/2024 (A.Y. 2018-19); ITA No. 904/Jodh/2024 (A.Y. 2019-20) ; ITA No. 916/Jodh/2024 (A.Y. 2017-18) and ITA No. 915/Jodh/2024 Assessment Year 2017-18 the assessee taken common grounds of appeal except and therefore grounds of appeal are extracted from ITA No. 903/Jodh/2024 in respect with Assessment Year 2018-19 as a lead case for discussion and finding which reads as under:

1. The CIT(A) erred in law and on facts in confirming the assessment order passed u/s 153A of the Act ignoring that the said order was passed without requisite approval warranted u/s 153D of the Act and therefore bad in law. Thus, the assessment order so framed ignoring the provisions of the law should be quashed.

2. The CIT(A) erred in law and on facts in confirming the addition of Rss for alleged on money received on sale of property made merely on presumptions and surmises on the basis of a excel sheet seized during the course of search (a) ignoring that the seized excel sheet was a dumb document and mentioned some rough estimates/ projections calculation and did not contain any actual figures which has been ignored while framing the assessment order for assessment year 2017-18 (b) without bringing any corroborative evidence on record to suggest that the assessee received any on money (c) without making any inquiries from the buyers in this regard (d) by picking and choosing figures from two different seized documents as per convenience, (e) ignoring that Id. AO confirmed in remand report that no enquiry has been made from buyer of the House, (f) ignoring that Id. AO confirmed in remand report that no addition has been made in the hands of the buyer towards alleged on Money, (g) ignoring the registered sale deeds and valuation reports of the sub-registrar (h) without appreciating the affidavit of the assessee and (i) ignoring provisions of section 43CA. Thus, the addition so made should be deleted.



3. Without prejudice to the above grounds of appeal, if the Same as Ground amount of Rs. 27,71,000/- is held as on money received above in cash then it should be treated as part of sale consideration and the addition should be restricted to reasonable net profit on the alleged on-money receipts and the entire amount cannot be considered as income as the assessee has opted for taxation u/s 44AD of the Act. Necessary directions may be issued in this regard.
4. Without prejudice to the above ground of appeal, if the Same as Gr amounts of Rs. 27,71,000/- is held as income of the abm assessee on the basis of excel sheet, then it cannot be taxed u/s 69A of the Act (a) since the conditions laid down u/s 69A of the Act are not fulfilled as a rough noting on an excel sheet cannot be said to be money, bullion, jewellery or valuable article in an manner ) Section 69A is a deeming section and should be strictly construed (c) since the on-money received in cash will partake the same character as the sale consideration of the said property and (d) since the sale consideration was received for property held as business asset and thus, the income will partake the character of business income. Thus, the said amount should be assessed under normal business income. Necessary directions should be issued in this re ard.
5. Without prejudice to the above grounds of appeal, if the Same amount of Rs. is held as income, then it can neither be assessed u/s 69A of the Act and nor taxed u/s 115BBE of the Act since the nature and source of income stands explained as sale consideration received from the buyer against sale of business asset. Thus, the said income should be taxed as normal rates and not u/s 115BBE of the Act. Necessary directions should be issued in this ard.
6. The CIT(A) erred in law and on facts in confirming the 25 addition of Rs. made merely on presumptions and surmises on the basis of a excel sheet seized during the course of search (a) ignoring that the seized excel sheet was a dumb document and mentioned some rough estimates/ projections calculation and did not contain any actual figures which has been ignored while framing the assessment order for assessment year 2017-18 (b) without bringing any corroborative evidence on record to suggest that the assessee received any on money (c) without making any inquiries from the buyers in this regard (d) by picking and choosing figures from two different seized documents as per convenience, (e) without appreciating the affidavit of the assessee and (f) the fact that no sale of land was undertaken by the assessee. Thus, the addition so made should be deleted.
7. The CIT(A) erred in law and on facts in confirming and Same addition of Rs. 33,21,000/- made by assessing officer out of Rs. 52,00,000/- merely on surmises and conjectures by presuming that Rs. 18,79,000 out of Rs. 52,00,000/- pertained to on money received for properties sold in AY 2017-18 and Rs. 33,21,000/- pertained to AY 2018-19 though nothing was mentioned in the excel sheet about the nature of the said amount and the time period to which it pertained. Thus, the addition so made merely on surmises and conjectures should be deleted.
8. The CIT(A) erred in law and on facts in confirming the 1 addition of Rs. u/s 69C of the Act for inflation of construction expenses on the basis of an excel sheet (a) ignoring that the seized page was a dumb document and mentioned some rough / estimated calculation and did not contain any actual figures and (b) it does not have any evidentiary value. Thus, the addition made on the basis of such sheet should be deleted.
9. The CIT(A) erred in law and on facts in confirming the Same addition of Rs. u/s 69C of the Act in the AY 2018-19 for inflation of construction expenses on the basis of an excel



sheet presuming that the relevant property being House No. 14 was sold on 07/04/2017 (AO Page 29) (a) ignoring that the said property was actually sold on 14/12/2016 (AO Page 5) and even the addition for alleged receipt of its on-money was made in AY 2017-18 (b) ignoring that the construction expenses were claimed in the return filed for the AY 2017-18 and not for the assessment year under consideration. Thus, the disallowance so made should be deleted.

10. Without prejudice to the above ground, the CIT(A) Same erred in law and on facts in confirming the addition of Rs. 1,65,000/- made u/s 69C of the Act for inflation of construction % expenses on the basis of an excel sheet (a) ignoring that the construction expenses of Rs. 24,25,000/- were recorded in the books of account as against Rs. 22,60,000/- mentioned in the excel sheet (b) the sources of entire construction expenses were duly recorded in the books of account and thus, stands explained (c) Section 69C is a deeming section to be strictly construed and (d) this section cannot be applied unless conditions laid down therein are fulfilled. Thus, the addition so made u/s 69C of the Act should be deleted.

11. Without prejudice to the above ground of appeal, if any Same addition has to be made for this amount, it cannot be made u/s 69C of the Act since there is no unexplained expenditure and thus, the tax cannot be levied u/s 115BBE of the Act. Thus, if the addition is sustained for any reason, then the tax should be levied at normal rates. Necessary directions should be issued in this regard.

12. The appellants craves the leave to add, substitute, Leg modify, delete or amend all or any ground of appeal either before or at the time of hearing.

3. In ground No.1 the assessee has challenged validity of the assessment order passed u/s 153A of the Act in absence of the requisite approval warranted u/s 153D of the Act and so these orders were bad in law.

3.1 The Ld. CIT (A) has observed in the impugned order that there is no time limit prescribed in the statute for granting approval. Hence, the granting of approval cannot be said to be mechanical when there is clear noting about going through the draft assessment order (DFA) by the Additional Commissioner in the letter granting the approval. Thus, he rejected the legal ground by stating that the approval u/s 153D is merely an administrative action and in support, he relies on the decision of the Income Tax Appellate Tribunal Mumbai Bench "C",



Mumbai in the case of Pratibha Pipes & Structural Ltd Vs DCIT, Cent. Cir. 17 & 28, Mumbai ITA No.3874/Mum/2015 - AY 2007-08 ITA No.3875/Mum/2015 - AY 2008-09 and ITA No.3876/Mum/2015 - AY 2009-1b ITA No.7120/Mum/2016 - AY 2011-12.

3.2 The Ld. Counsel for the assessee has submitted that as per mandate, the Assessing (in short "the AO") Officer is required to pass the assessment order with prior approval of the Addl. CIT and that the Addl. CIT has to apply his mind to the facts of the case before granting such approval. The approval should not have been granted in a mechanical manner. It is a settled position of law that if the approval required u/s 153D granted in mechanical manner, then the assessment orders so passed are treated as without approval and have to be quashed void. He placed reliance on various judgements as per paper book filed.

3.3 The Ld. CIT DR stands by the impugned order and reiterates the observation of the CIT (A) but he could rebut the contention of the appellant that the approval u/s 153D of the act is mandatory and it is not merely an administrative formality in compliance to CBDT Circular/Notification, if any issued.

4. Heard both the sides, perused the material on record, written submissions and case law cited before us on the issue of approval u/s 153D of the Act. On



perusal of the letter dated 22/04/2021 sent by the AO to the Addl. CIT requesting for approval u/s 153D in the case of the assessee, it can be seen that the draft assessment orders were sent for approval on 22/04/2021 and admittedly, the Addl. CIT granted approval on 23/04/2021 i.e. within one day [CIT(A) order page 14 para 2.7 PB page 24] in all the 21 assessment orders of the Group cases i.e. within a day. In our view, it is not possible to look into the 21 draft assessment orders and its assessment record in less than 24 hours where it is not clear that when these orders were dispatched and received back with approval as the Addl. DIT has issued the said approval u/s 153D of the act, without mentioning DIN. Further, there may be assessment orders passed in some other cases / groups which have also been granted approval on the same date.

4.1 On similar facts, the Hon'ble Supreme Court has dismissed the Revenue's SLP filed against Orissa High Court ruling in the case of "M/s Serajuddin & Co. Pvt. Ltd Vs. ACIT Circle 1(2), Bhubaneshwar", dated 10/10/2022 where an addition of Rs. 800 Crore was made in post-search assessment for 7 Assessment years was deleted on legal ground. The Hon'ble High Court while upholding ITAT order observed that Section 153D approval is a mandatory requirement in posts search assessments which cannot be given mechanically. The High Court, thus, concurred with the finding of the ITAT that such approval was granted



mechanically without application of mind by the Addl. CIT which vitiated the assessment orders.

4.2 On the similar facts, the **ITAT Amritsar Bench has adjudicated and decided the issue in favour of the assessee in the case of "Madan Lal vs DCIT", 112 to 118/ Asr/2018 dated 16/08/2021 by following its own judgement in another case of Arch Pharmalabs Ltd. vs. ACIT ITA No.6656/Mum/2017 dated 07.04.2021 wherein it was held as under:-**

*11.* We have carefully considered the rival submissions and material placed on record and case laws cited. The legal objection of transgression of requirements of approval under section 153D is in controversy. Pursuant to search carried out in the premises of the Assessee and other connected group cases, the assessment was carried out under S. 153A/ 143(3) of the Act. The Assessing officer has forwarded the draft assessment orders for 7 years (AY 2003-04 to AY 2009-10) for endorsement and approval of the superior authority at the fag end of the limitation period on 29/12/2010 to meet the legal requirement imposed by section 153D of the Act. The Addl. CIT i.e. the superior authority has, in turn, granted a combined and consolidated approval for all 7 assessment years in prompt on 31/12/2010.

*11.1* It may be pertinent to observe at this stage that the impugned assessment orders were passed u/s. 143(3) rws 153A of the Act for the AY 2003-04 to AY 2008-09 and for the AY 2009-10 u/s. 143(3) of the Act pursuant to search carried out under s.132 of the Act. For passing such assessment orders, the Assessing Officer is governed



by s.153D of the Act whereby the Assessing Officer should complete the assessment proceedings and prepare a draft assessment order which need to be placed before the approving authority i.e. Joint / Addl. Commissioner (designated authority giving approval to search assessments u/s. 153D of the Act). The approving authority is necessarily required to objectively evaluate such draft assessment order with due application of mind on various issues contained in such order so as to derive his/ her conclusive satisfaction that the proposed action of AO is in conformity with subsisting law. The AO is obligated to pass the assessment order exactly, as per approval/ directions of the designated authority. Inevitably, this evaluation is to be made on basis of material gathered at time of search as well as obtained in the course of the assessment proceeding. The requirement of law is to grant approval not merely as a formality or a symbolic act but a mandatory requirement.

*11.2* In the backdrop of facts narrated in the preceding paras, it is the contention on behalf of the assessee that approval granted under S. 153D does not meet the requirement of law and hence assessment orders passed in consequence of such non-est approval is a nullity in law. The assessment orders thus passed is vitiated in law which illegality cannot be cured. In support of charge of non-est approval, several contentions have been raised viz (i) the approval accorded under section 153D is without any occasion to refer to the assessment records and seized material, if any, incriminating the assessee and hence such approval is in the realm of an abstract approval of draft assessment orders which was unsubstantiated and unsupported and consequently suffered from total non-application of mind (ii) approval granted hurriedly in a spur involving voluminous assessments spanning over 7 assessment



years and thus only a symbolic exercise to meet the requirement of law (iii) Total lack of objectivity in drawing satisfaction on objective material while giving a combined approval for 7 assessments and also without evaluating the nuances of each assessment year involved (iv) the mundane action of Addl. CIT under S. 153D in a cosmetic manner gives infallible impression of approval on dotted line and thus defeats the purpose of supervision of search assessments (iv) initiated draft assessment orders not available in office records. 11.3 As observed, Section 153D bestows a supervisory jurisdiction on the designated authority in respect of search related assessment and thus enjoins a salutary duty of statutory nature. The designated superior authority is thus expected to confirm to the statutory requirement in letter and spirit. It is evident from the communication of AO and consequent approval thereon under S. 153D that no assessment record for any assessment year in question or any seized material had travelled to the authority concerned for his objective consideration of the same qua the draft assessment orders. No reference in this regard is made in the approval note either which may discard such allegation as untrue. No other material or order sheet in assessment proceedings etc. were placed before us either to establish otherwise. Except these two documents namely, a solitary communication from AO to the Addl. CIT dated 29/12/2010 and an in turn approval by Addl. CIT dated 31/12/2010, there is nothing else before us to gauge the facts differently. A bare glance at the approval so accorded makes it evident that such approval is generic and listless and accorded in a blanket manner without any reference to any issue in respect of any of the 7 assessment years. Apparently, the approval has been granted on a dotted line without any



availability of reasonable time which firms up the belief towards non application of mind. Besides, the approval has been granted in a consolidated manner for all assessment years for which voluminous assessment orders were prepared. The whole sequence of action apparently appears to be illusory to merely meet the requirement of law as an empty formality. It is also alleged on behalf of assessee that the draft assessment orders are not available on record which allegation has not been rebutted. The draft assessment showing some marking / initials etc. could have given a valuable input on the applicability of mind and could throw light on objectivity applied owing to total silence on any delineation on these aspects in the approval memo. The records before us are totally muted.

*11.4* Based on solitary communication placed before us, it is ostensible that draft assessment orders were placed before the Addl. CIT on 29.12.2010 for the first time. It is axiomatic from the plain reading of approval memo that various assessment orders and the issues incorporated in the assessment orders, were never subjected to any discussion with the authority granting approval prior to 29.12.2010. It is evident from the **CBDT Circular No. 3 of 2008 dated 12.03.2008** that the legislature in its highest wisdom made it obligatory that the assessments of search cases should be made with the prior approval of superior authority, so that the superior authority apply their mind on the materials and other attending circumstances on the basis of which the Assessing officer is making the assessment and after due application of mind and on the basis of seized materials, the superior authority is required to accord approval the respective Assessment order. Solemn object of entrusting the duty of Approval of assessment in search cases is that the Additional CIT, with his



experience and maturity of understanding should at least minimally scrutinize the seized documents and any other material forming the foundation of Assessment. It is elementary that whenever any statutory obligation is cast upon any statutory authority, such authority is required to discharge its obligation not mechanically, not even formally but after due application of mind. Thus, the obligation of granting Approval acts as an inbuilt protection to the taxpayer against arbitrary or unjust exercise of discretion by the AO. The approval granted under section 153D of the Act should necessarily reflect due application of mind and if the same is subjected to judicial scrutiny, it should stand for itself and should be self-defending. There are long line of judicial precedents which provides guidance in applying the law in this regard.

*11.5* At the cost of repetition, it may be reiterated that in the instant case, approving authority did not mention anything in the approval memo towards his/ her process of deriving satisfaction so as to exhibit his/her due application of mind. We may observe that Para 2 of the above approval letter merely says that "Approval is hereby accorded u/s. 153D of the Income-tax Act, 1961 to complete assessments u/s. 143(3) r.w.s. 153A of the I.T. Act in the following case on the basis of draft assessment orders..."which clearly proves that the Addl. CIT had routinely given approval to the AO to pass the order only on the basis of contents mentioned in the draft assessment order without any application of mind and seized materials were not looked at and/or other enquiry and examination was never carried out. From the said approval, it can be easily inferred that the said order was approved, solely relying upon the implied undertaking obtained from the Assessing Officer in the form of draft assessment order that AO has taken due care while framing respective draft assessment orders and that



all the observations made in the appraisal report relating to examination / investigation of seized material and issues unearthed during search have been statedly considered by the AO seeking approval. Thus, the sanctioning authority has, in effect, abdicated his/ her statutory functions and delightfully relegated his/her statutory duty to the subordinate AO, whose action the Additional CIT, was supposed to supervise. The addl. CIT in short appears to have adopted a short cut in the matter and an undertaking from AO was considered adequate by him/ her to accord approval in all assessments involved. Manifestly, the Additional CIT, without any consideration of merits in proposed adjustments with reference to appraisal report, incriminating material collected in search etc. has proceeded to grant a simplicitor approval. This approach of the Additional CIT, Central has rendered the Approval to be a mere formality and can not be countenanced in law.

11.6 There are several decisions, which supports the view that approval granted by the superior authority in mechanical manner defeats the very purpose of obtaining approval u/s 153D. Such perfunctory approval has no legal sanctity in the eyes of the law. The decision of the coordinate bench in Shreelekha Damani vs. DCIT 173 TTJ 332(Mum.) and approved by jurisdictional High Court subsequently as reported in 307 CTR 218 affirms the plea of the Assessee. 11.7 Very recently, the co-ordinate bench in Sanjay Duggal &ors (ITA 1813/Del/2019 &ors; order dated 19.01.2021 has also echoed the same view after a detailed analysis of similar facts and also expressed a discordant note on such mechanical exercise of responsibility placed on designated authority under section 153D of the Act. Hence, vindicated by the factual position as noted in preceding paras, we find considerable force in the plea raised by the Assessee against



maintainability of hollow approval under S. 153D totally devoid of any application of mind. The approval so granted under the shelter of section 153D, does not, in our view, pass the test of legitimacy. The Assessment orders of various assessment years as a consequence of such inexplicable approval lacks legitimacy. Consequently, the impugned assessments relating to search in captioned appeals are non est and a nullity and hence quashed.

12. In view of prima facie merits found in the legal objections, We do not consider it expedient to look into the aspects on merits of additions/ disallowance."

4.3 We note that the Ld. CIT(A) failed to rebut the contention of the assessee that in one day how the additional CIT could do justice in granting approval in as many as 21 search assessment cases of the assessee group and other search cases while going through the search assessment orders which were being passed considering alleged voluminous seized material by establishing the unexplained income detected based on vital seized documents and that the provisions of approval are statutory action u/s 153D of the Income Tax Act which can not be in any manner termed as administrative decision even if notified by the CBDT. Therefore, the assessment order dated 29.04.2021 passed in the present 4 cases are liable to be held invalid because approval has been granted in a mechanical manner by the Id. Add CIT.



5. Respectfully following the Hon'ble Supreme Court in the case of "M/s Serajuddin & Co. Pvt. Ltd", (Supra) we hold that the Section 153D approval is a mandatory requirement in posts search assessments which cannot be granted in mechanical manner. Thus, the Ld. CIT (A) decision is infirm and perverse to the facts on record in observing that the 153D approval is administrative decision and procedure requirement of the department for internal communication.
6. Therefore, the approval u/s 153D of the Act, was granted mechanically without application of mind by the Addl. CIT. Accordingly the assessment orders passed by the AO, in all the four cases are held as illegal and void ab initio.
7. The legal issue and the facts in ITA No. 904/Jodh/2024 (Assessment Year 2019-20); ITA No. 916/Jodh/2024 (Assessment Year 2017-18) and ITA No. 915/Jodh/2024 (Assessment Year 2017-18) are exactly identical to that of the legal issue and the facts in ITA No. 903/Jodh/2024 (Assessment Year 2018-19) and therefore, our observation and finding given in ITA No. 903/Jodh/2024 on the legal issue of approval u/s 153D of the Act shall apply to the appeals in ITA



ITA No. 903/Jodh/2024 (A.Y. 2018-19)  
ITA No. 904/Jodh/2024 (A.Y. 2019-20)  
ITA No. 915/Jodh/2024 (A.Y. 2017-18)  
ITA No. 916/Jodh/2024 (A.Y. 2017-18)

No. 904/Jodh/2024; ITA No. 916/Jodh/2024 and ITA No. 915/Jodh/2024 in *mutatis mutandis*, ordered accordingly.

8. In the backdrop of the aforesaid discussion, these 4 appeals of the assesses are allowed.

Order pronounced on 24/06/2025 in the open Court.

- Sd / -

(DR. S. SEETHALAKSHMI)  
JUDICIAL MEMBER

- Sd / -

(DR. MITHA LAL MEENA)  
ACCOUNTANT MEMBER

Dated : 24/06/2025

Copies to :

- (1) The appellant.
- (2) The respondent.
- (3) CIT
- (4) CIT(A)
- (5) Departmental Representative
- (6) Guard File

By Oder  
Assistant Registrar,  
Income Tax Appellate Tribunal,  
Jodhpur Bench,  
Jodhpur.

