

**आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक**  
**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK**  
**(THROUGH VIRTUAL HEARING)**

श्री जार्ज माथन, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष ।

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

आयकर अपील सं/ITA No.243/CTK/2025

AND

आयकर अपील सं/ITA No.248/CTK/2025

(निर्धारण वर्ष / Assessment Year : 2012-2013)

<b>Maleckunnel Philip Varghese</b> AT/PO/PS: Ainthapali, Dist : Sambalpur-768004	Vs	<b>DCIT, Central Circle, Sambalpur</b>
PAN No. : <b>ABVPV 8418 K</b>		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से / Assessee by	:	Sh P.K.Mishra & Baidyanath Behera, ARs
राजस्व की ओर से / Revenue by	:	Shri Ashim Kumar Chakraborty, CIT-DR
सुनवाई की तारीख / <b>Date of Hearing</b>	:	24/07/2025
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	24/07/2025

**आदेश / O R D E R**

**Per Bench :**

These two appeals are filed by the assessee against the separate orders of the Id. CIT(A), Bhubaneswar-2, both dated 28.02.2025 for the assessment year 2012-2013.

2. At the outset, Id. AR submitted that ITA No.243/CTK/2025 being the quantum appeal and ITA No.248/CTK/2025 is a penalty appeal. As the facts and circumstances involved in both the appeals are identical, therefore, he argued first in the quantum appeal being ITA No.243/CTK/2025.

3. It was the submission that the assessee is a proprietor of M/s Southern Construction and derives income from the contract work. A search and seizure operation u/s.132 of the Act was conducted in the flagship concern M/s BKD Infrastructure Pvt. Ltd. Sambalbhumi, NH-6, Dhankauda, Sambalpur and group on 30.02.2017 and books of accounts along with other documents were found and seized. Consequent upon the said search and seizure action u/s.132 of the Act, a survey u/s.133A of the Act was conducted in the premises of M/s Associate Infra Developers Pvt. Ltd. on 03.02.2017. It was the submission that documents found during the survey being AIDPL-01 to AIDPL-19 were found and impounded. It was the submission that on the basis of document being BKDO-11 seized from M/s BKD Infrastructure (P) Ltd. and documents impounded on survey, the case of the assessee was taken for assessment u/s.153C/143(3) of the Act. Subsequently after taking the approval from the JCIT (Central), Bhubaneswar, the AO framed the assessment in the case of the assessee u/s.153C/144 of the Act. It was the submission of the Id.AR that the approval u/s.153D of the Act of the draft assessment order u/s.153C of the Act issued by the JCIT (Central), Bhubaneswar on 28.12.2018 was bad in law. The said approval reads as follows :-

**ANNEXURE-4 SERIES****- 36 -**

भारत सरकार / GOVERNMENT OF INDIA

कार्यालय संयुक्त आयकर आयुक्त (केंद्रीय), भुवनेश्वर, राजस्व विहार, आनेक्सी, आयकर भवन -751007  
 OFFICE OF THE JOINT COMMISSIONER OF INCOME TAX (CENTRAL), BHUBANESWAR, AAYAKAR BHAWAN ANNEXE,  
 RAJASWA VIHAR, BHUBANESWAR-751007 Ph. & Fax No. 0674-2589-279  
 email address: bhubaneswar.addlctc.en@incometax.gov.in  
 No. Joint CIT(Central)/BBSR/Approval/153D/2018-19/2599 Dated:- 28/12/2018

सेवा में /To

The Dy. Commissioner of Income Tax,  
 Central Circle, Sambalpur

Sub: Approval of the draft Assessment orders u/s 153D of the I.T. Act, 1961  
 - matter reg.

Ref: Your letter F.No.DCIT(Central)/153D/SBP/2018-19/1374 dtd. 27-12-2018 (received by this office on 28-12-2018) seeking approval of draft assessment orders u/s 153D of the I.T. Act.

Please refer to the letter under reference in which approval u/s- 153D has been sought for and also the several discussions had with you on this matter earlier.

I have gone through the Assessment orders, appraisal report and other related materials of these cases.

Now, approval is hereby accorded as per the provision of section 153D of the I.T. Act for passing assessment order in respect of the following cases.

Sl. No	Name of the assessee	PAN	A.Y.	Total Income to be assessed (Rs.)	Section under which order proposed to be passed
1.	Sri. Maleckunnel Philip Varghese	ABVPV8418K	2011-12	67,70,000/-	153C r.w.s. 144
2.	Sri. Maleckunnel Philip Varghese	ABVPV8418K	2012-13	39,42,300/-	153C r.w.s. 144
3.	Sri. Maleckunnel Philip Varghese	ABVPV8418K	2013-14	44,87,960/-	153C r.w.s. 144
4.	Sri. Maleckunnel Philip Varghese	ABVPV8418K	2014-15	15,31,220/-	153C r.w.s. 144
5.	Sri. Maleckunnel Philip Varghese	ABVPV8418K	2015-16	1,26,73,910/-	153C r.w.s. 144
6.	Sri. Maleckunnel Philip Varghese	ABVPV8418K	2016-17	96,13,470/-	153C r.w.s. 144
7.	Sri. Maleckunnel Philip Varghese	ABVPV8418K	2017-18	1,97,15,070/-	144

This approval is accorded after due application of mind in these cases.

The points mentioned in the appraisal report but not considered in the assessment should be mentioned in the note "not for the assessee".



(एस.के.बंदोपाध्याय/ S.K.Bandyopadhyay)

संयुक्त आयकर आयुक्त (केंद्रीय)

Joint Commissioner of Income Tax (Central)

भुवनेश्वर Bhubaneswar

Encl: Records as forwarded with the proposal

CERTIFIED TO BE TRUE COPY.

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(Rabindra Kumar Chaudhary)  
 Asst. Commissioner of Income Tax  
 Central Circle, Sambalpur

4. It was the submission that the Hon'ble Karnataka High Court in the case of Sunil Kumar Sharma, reported in [2024] 469 ITR 197 (Karnataka)/[2024] 159 taxmann.com 179 (Karnataka) had categorically held that, "the satisfaction note is required to be recorded under section 153C of the Act for each assessment year and hence, a consolidated satisfaction note recorded for different assessment years, would vitiate entire assessment proceedings". The said decision of the Hon'ble Karnataka High Court has been upheld by the Hon'ble Supreme Court reported in [2024] 168 taxmann.com 77 (SC)/[2024] 469 ITR 271 (SC)]. The relevant observation of the Hon'ble Karnataka High Court in paras 53 t reads as follows :-

*53. Further, satisfaction note is required to be recorded under section 153C of the IT Act for each Assessment Year and in the impugned proceedings, a consolidated satisfaction note has been recorded for different Assessment Years, which also vitiates the entire assessment proceedings. In view of all these findings, it is said that the appeals do not have any substance for seeking intervention as sought for by the appellant/Revenue.*

*54. The question as regards whether in an intra court appeal, a Division Bench could remit a writ petition in the matter of moulding the relief, it is relevant to refer to an Apex Court decision dated 31-7-2018 rendered in the case of Roma Sonkar v. Madhya Pradesh State Public Service Commission [Civil Appeal Nos. 7400-7401 of 2018, dated 31-7-2018]. The relevant paragraph 3 of the said order reads thus:*

*"3. We have very serious reservations whether the Division Bench in an intra court appeal could have remitted a writ*

*petition in the matter of moulding the relief. It is the exercise of jurisdiction of the High Court under Article 226 of the Constitution of India. The learned Single Judge as well as the Division Bench exercised the same jurisdiction. Only to avoid inconvenience to the litigants, another tier of screening by the Division Bench is provided in terms of the power of the High Court but that does not mean that the Single Judge is subordinate to the Division Bench. Being a writ proceeding, the Division Bench was called upon, in the intra court appeal, primarily and mostly to consider the correctness or otherwise of the view taken by the learned Single Judge. Hence, in our view, the Division Bench needs to consider the appeal(s) on merits by deciding on the correctness of the judgment of the learned Single Judge, instead of remitting the matter to the learned Single Judge."*

*55. In the totality of circumstances, and also on dwelling in detail with the materials, it reveals that the learned Single Judge has considered all the points and has gone through the reliances facilitated on both sides and has rendered the impugned order, which has been challenged by filing the present appeals. The grounds urged in the appeals preferred by the appellant/Revenue, do not have any substance and the impugned order rendered by the learned Single Judge do not JYOTI suffer from any infirmity and further, no warranting circumstances arise for interference. Consequently, these appeals deserve to be rejected as being devoid of merits.*

5. It was further submitted that the Hon'ble Delhi High Court in the case of Shiv Kumar Nayyar, reported in [2024] 163 taxmann.com 9 (Delhi)/[2024] 299 Taxman 385 (Delhi)/[2024] 467 ITR 186 (Delhi) has

also held that, “where approval under section 153D of the Act for relevant assessment year was granted by Addl. Commissioner for 43 cases on a single day without perusing draft assessment orders at all and without an independent application of mind, impugned assessment order was rightly declared to be illegal by Tribunal”.

6. Ld. AR further placed reliance on the decision of Jurisdictional High Court in the case of Serajuddin & Co., reported in [2023] 150 taxmann.com 146 (Orissa)/[2023] 292 Taxman 566 (Orissa)/[2023] 454 ITR 312 (Orissa), wherein on similar finding the Hon’ble Jurisdictional High Court has held that, “approval having been granted mechanically without application of mind by Additional Commissioner resulting in vitiating assessment orders themselves”. It was the submission that the said decision of the Hon’ble Jurisdictional High Court has also been upheld by the Hon’ble Supreme Court, reported in [2024] 163 taxmann.com 118 (SC)/[2024] 299 Taxman 448 (SC).

7. In reply, Id. CIT-DR submitted that the Id. JCIT has examined all the assessment records and has given the approval. It was the submission that the order of the Id. AO and that of the Id.CIT(A) are liable to be upheld.

8. We have considered the rival submissions. A perusal of the approval of the draft assessment orders granted by the Id.JCIT(Central), Bhubaneswar on 28.12.2018 shows that multiple approvals have been granted by a single order. On this issue, respectfully following the decision of the Hon’ble Karnataka High Court in the case of Sunil Kumar Sharma,

referred to supra, which is also approved by the Hon'ble Supreme Court, as it is noticed that the approvals have been granted by the Id. JCIT(Central), Bhubaneswar in a mechanical manner by a single order, therefore, we hold that the approval granted u/s.153D of the Act by the Id. JCIT(Central), Bhubaneswar in the case of the assessee is liable to be quashed and we do so.

9. A further perusal of the approval granted by the Id. JCIT shows that the approval has been granted in a mechanical manner and without application of mind. Consequently, respectfully following the decision of the Hon'ble Jurisdictional High Court in the case of Serajuddin & Co, referred to supra, which has also been upheld by the Hon'ble Supreme Court, we hold that the approval granted by the Id. JCIT(Central), Bhubaneswar dated 28.12.2018 in the case of the assessee is quashed as unsustainable. Consequently the assessment order passed in consequence to the approval granted u/s.153D of the Act, also stands quashed. Thus, the appeal of the assessee in ITA No.243/CTK/2025 is allowed.

10. Now, we shall take up the appeal filed by the assessee in ITA No.248/CTK/2025 against the order of the Id. CIT(A) in confirming the penalty levied by the AO u/s.271(1)(c) of the Act.

11. Since we have already quashed the assessment order while adjudicating the quantum appeal of the assessee in ITA No.243/CTK/2025, therefore, the penalty levied by the Assessing Officer and confirmed by the Id. CIT(A) would also stand quashed as the very

foundation of levy of penalty in the case of the assessee would not more survive. Thus, this appeal of the assessee is also allowed.

12. In the result, both appeals of the assessee are allowed.

Order dictated and pronounced in the open court on 24/07/2025.

**Sd/-**

(राजेश कुमार)  
(RAJESH KUMAR)

लेखा सदस्य/ ACCOUNTANT MEMBER

**Sd/-**

(जार्ज माथन)  
(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

दिनांक Dated 24/07/2025

*Prakash Kumar Mishra, Sr.P.S.*

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack