IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI SONJOY SARMA, JM

ITA Nos. 517 to 520/Coch/2023
(AYs : 2007-08, 2009-10, 2010-11 & 2012-13)

K.K. Radhakrishnan, PKK Wood Craft Peravoor, Kannur [PAN : AFDPK 8650 E]	....	Appellant
vs.		
DCIT, Central Circle-II, Kozhikode.	....	Respondents

Assessee by:	Shri Arun Raj S, Advocate
Respondent by:	Shri Suresh Sivanandan, CIT-DR

Date of Hearing:	04.06.2025
Date of Pronouncement:	04.08.2025

O R D E R

Per: Inturi Rama Rao, AM

These appeals filed by the assessee are directed against the separate orders of Ld. Commissioner of Income Tax (Appeals), Kochi-3 [CIT(A)] dated 16/06/2023 for the Assessment Years (A.Y.) 2007-08, 2009-10, 2010-11 & 2012-13 respectively.

2. Since identical facts and issues involved in all these appeals, these appeals heard together and disposed of by this common order.

3. For the sake of clarity and convenience, the facts relevant to the A.Y. 2007-08 in ITA No.517/Coch/2023 are stated herein.

4. Brief facts of the case are that assessee is a proprietor of M/s. K.K. Wood Crafts and also partner in K.K. Group engaged in the business of real estate, civil contract & construction and also running bar & restaurants. A search & seizure operations u/sec. 132 of the Income Tax Act, 1961 (for short, 'the Act') were conducted on 26/09/2012 at the business premises of the assessee. During the course of search and seizure operations, certain incriminating material was stated to have been found and seized. The incriminating material, so seized, revealed that assessee has earned huge unaccounted income from Kannur Municipal Bus Stand constructed under BOT arrangement and also earned unaccounted income from the business of sale and purchase of Indian made foreign liquor (IMFL). Based on this information, the DCIT, Central Circle-2, Kozhikode (for short, 'AO') issued notices u/s. 153A of the Act on 21/06/2013. The return of income for the A.Y. 2007-08 was filed on 05/08/2013 declaring income of Rs.3,10,370/- and agricultural income of Rs. 1,46,327/-.

5. Against the said return of income, assessment was completed by the AO at a total income of Rs. 14,50,370/- after making the addition of Rs. 10,00,000/- u/s. 69C of the Act and Rs. 1,40,000/- on account of assessee's personal expenditure.

6. Being aggrieved by the above assessment order, the assessee filed an appeal before the CIT(A). It was contended before the CIT(A) that the

assessment order passed by the AO is invalid as the JCIT had granted a mechanical approval u/sec. 153D of the Act and the additions cannot be made in absence of any incriminating material. However, the CIT(A) rejected the contention of the assessee by placing reliance on the decision of Hon'ble Bombay High Court in *Chhagan Chandrakant Bhujbal v. ITO* (2022) 440 ITR 359 (Bom). The learned CIT(A) also rejected the argument that the additions cannot be made in absence of any incriminating material found by placing reliance on the decisions of Hon'ble Kerala High Court in the case of *G.N. Gopakumar vs. CIT* [(2016) 75 taxmann.com 215 (Ker.)] and *CIT vs. Hotel Meriya* [332 ITR 537]. Thus, the learned CIT(A) dismissed the appeal of the assessee.

7. Aggrieved by the order of the learned CIT(A), the assessee is in appeal before this Tribunal.

8. The assessee raised grounds of appeal Nos. 1 & 2 challenging the very validity of assessment order on the ground that the approval u/sec. 153D granted by the JCIT is without application of mind, therefore the assessment order is bad in law. It was submitted that last date of hearing by the AO was on 19/03/2015 at Calicut, but the concerned JCIT was stationed at Kochi and the final assessment orders were passed on 30/03/2015 in all 35 cases. Based on these facts, it was submitted that it is impossible to apply his mind on the entire assessment records and seized material within such a short period, as the AO and the JCIT were located at different places, therefore, it should be presumed to have accorded approval mechanically. In this regard, reliance was placed on the judgment

of Hon'ble Orissa High Court in the case of *ACIT vs. M/s.Serajuddin & Co.* 454 ITR 312 (Orissa) and Pune Tribunal's decision in the case of *SMW Ispat (P.) Ltd. vs. ACIT* [2024] 163 taxmann.com 119 (Pune – Trib.).

On the other hand, ld. CIT-DR vehemently opposed the above submissions and submitted that search and seizure operations were continuously monitored by JCIT and, therefore, it cannot be said that JCIT accorded the approval u/s. 153D mechanically. He further submitted that there is no material brought on record to show that JCIT had given mechanical approval.

9. We have heard the rival submissions and perused the material on record. The issue that arises for our consideration in these grounds of appeal is whether the JCIT had accorded mechanical approval u/s 153D of the Act or not. It is settled position of law that the approval of the superior officer should not be done mechanically, without application of mind. Where the approval is granted mechanically, it would vitiate the assessment order itself. Reliance, in this regard, can be placed in the case of *Rajesh Kumar vs. DCIT* (2006) 287 ITR 91 (SC) and also *Sahara India (Firm) vs. CIT* [2008] 300 ITR 403 (SC).

The issue whether the JCIT had accorded the approval mechanically or not has to be judged based on the material on the basis of which the JCIT formed the opinion and accorded the approval. In the present case, no material was produced before us to show that JCIT had accorded approval u/sec. 153D mechanically except by filing the following communication received by the AO from JCIT:-

JOINT COMMISSIONER OF INCOME TAX
CENTRAL RANGE, ERNAKULAM

ALFA-LIZA BUILDING, OPP. SRV LP SCHOOL,
CHITTOOR ROAD, KOCHI - 682011
TELEPHONE: 0484 - 2375684 FAX: 0484 - 2377535

F.No:48/JCIT/CR-EKM/153D/2014-15 Dated: 29th Mar 2015

To

The Deputy Commissioner of Income Tax,
Central Circle-2, Kozhikode

Sir,

Sub: Approval u/s 153D; **Shri K K Radhakrishnan** [PAN- AFDPK8650E]; AY: 2007-08 to 2012-13
Ref: Draft orders submitted vide your letter dated 27-03-2015

Approval u/s 153D is given to the draft assessment orders u/s 153C of AY: 2007-2008 to 2012-13, as shown below:

AY	Returned Income u/s 153C	Assessed Income	Penalty Proceeding u/s
2007-08	3,10,370	**14,50,370**	271(1)(c)
2008-09	6,43,400	**1,45,03,400**	271(1)(c)
2009-10	6,00,730	**12,87,197**	271(1)(c)
2010-11	8,11,240	**10,71,240**	271(1)(c)
2011-12	9,99,970	**9,99,970**	Nil
2012-13	20,47,120	**22,47,120**	271(1)(c)

Yours faithfully,

(Dr. SANJAY JOSEPH)
Joint Commissioner of Income Tax,
Central Range, Ernakulam

10. The above communication is nothing but a covering letter forwarding approval from JCIT to AO. It is not copy of actual approval accorded by JCIT. Based on this material, it is difficult for us to judge whether the JCIT had accorded approval mechanically or not. Thus, the appellant had

failed to adduce any evidence to show that the approval was mechanical. No relief can be granted based on the bald submissions.

11. As regards to reliance placed by the learned counsel for the assessee on the decision of Pune Bench of this Tribunal in the case of *SMW Ispat (P.) Ltd.* (supra) the decision is based on the peculiar facts of that case and, therefore, the ratio of the said judgment cannot be applied to the facts of the present case. In any event, in the said decision the decision of Hon'ble Bombay High Court in the case of *Chhagan Chandrakant Bhujbal vs. ITO* (2022) 440 ITR 359 (Bom.) was neither referred to nor brought to the notice of the Tribunal. The decision of even non-jurisdictional High Court overrides the decision of the Tribunal.

12. Further, the findings of the learned CIT(A) that the impugned assessments were jointly monitored by the JCIT, remains uncontroverted by the assessee, merely because, the AO and JCIT were located at different places would not mean that there had been non-application of mind, especially when there was a time of 10 days between the last date of hearing by the AO and the date of assessment orders. Therefore, the ratio of Hon'ble Bombay High Court in the case of *Chhagan Chandrakant Bhujbal* (supra) is squarely applicable in the present appeal. The relevant part of the above judgment reads as under:-

> *"11. As regards the judgment of this court in German Remedies Ltd. (supra), 11 relied upon by Mr. Gopal, we certainly agree with Mr. Gopal that the power vested in the Commissioner under section 151 of the Act to grant or not to grant approval to the Assessing Officer to reopen an assessment is coupled with duty and the Commissioner is duty bound to apply his mind to the proposal put up to him for the approval in the light*

of the material relied upon by the Assessing Officer and such power cannot be exercised casually, in a routine and perfunctory manner. The court held in the facts and circumstances of that case that the approval granted in that case suffers from non-application of mind. It was in the peculiar facts and circumstances of that case. In the case at hand, there is nothing to indicate that there was non-application of mind. Merely because information was received at 5.47 p.m. and the notice was issued by 10.49 p.m. would not mean that there has been non-application of mind. If we hold that it would be merely speculative and based on conjecture."

The decision of Hon'ble Orissa High Court in the case of *M/s Serajuddin & Co.* (supra) based on the fact that the assessment orders were totally silent about the AO having written to the ACIT seeking his approval or Addl. CIT having granted such approval. Whereas, in the present case, the assessment orders the AO clearly mentioned that the assessment order is after getting approval as per section 153D of the Act from JCIT, Central Range, Kochi. In the absence of any material to the contrary, it is presumed that the statutory authorities have acted *bonafide* and lawfully. Therefore, the ratio of the decision of Hon'ble Orissa High Court in the case of M/s *Serajuddin* & Co. (supra) cannot be applied to the facts of the present case. We are of the considered opinion that the ratio of the Hon'ble Bombay High Court is squarely applicable to the facts of the case. In these circumstances, we do not find any merit in the grounds of appeal. Accordingly, these grounds of appeal No. 1 & 2 are dismissed.

13. Grounds of appeal Nos. 3 & 4 challenges the additions made by the AO as confirmed by the learned CIT(A). The appellant challenges the addition made by the AO on the ground that in the absence of any

incriminating material, no addition can be made in the assessment made pursuant to notices issued us 153A of the Act. Without prejudice to the above, it is contended in respect of assessment made u/s. 143(3) r.w.s. 153A, no estimation of income can be made.

14. It is undisputed proposition that in the case of search assessment u/sec. 153A that the addition can be made only based on the incriminating material found during the course of search and seizure operations. Reliance, in this regard, is placed on the decision of Hon'ble Supreme Court in the case of *PCIT vs. Abhisar Buildwell P. Ltd*. [2023] 454 ITR 212 (SC), however, this proposition of law is not applicable to the facts of the present case. The AO made the addition based on the incriminating material found during the course of search and seizure operations marked as CHN/12-13/AJ/B-1 and this material was confronted to the assessee. Moreover, the other limb of decision of Hon'ble Supreme Court in *Abhisar Buildwell P. Ltd.* (supra) comes into play i.e. once some incriminating evidence is found, the AO is empowered to make all other additions irrespective of fact that the addition is based on seized incriminating material or not. The relevant portion of the judgment of Hon'ble Supreme Court in *Abhisar Buildwell P. Ltd* (supra) is as follows:-

> *"14. (i) that in case of search under section 132 or requisition under section 132A, the Assessing Officer assumes the jurisdiction for block assessment under section 153A; -*
>
> *(ii) all pending assessments/reassessments shall stand abated;*
>
> *(iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the Assessing Officer would assume the jurisdiction to assess or reassess the "total income" taking into*

consideration the incriminating material unearthed during the search and the other material available with the Assessing Officer including the income declared in the returns; and

(iv) in case no incriminating material is unearthed during the search, the Assessing Officer cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the Assessing Officer in the absence of any incriminating material found during the course of search under section 132 or requisition under section 132A of the Act, 1961. However, the completed/unabated assessments can be reopened by the Assessing Officer in exercise of powers under section 147/148 of the Act, subject to fulfillment of the conditions as envisaged/mentioned under section 147/148 of the Act and those powers are saved."

15. As regards, the addition made based on extrapolation in the search assessment, the issue stands settled by the judgment of the Hon'ble Jurisdictional High Court in the case of *CIT vs. Hotel Meriya* (332 ITR 537). The relevant portion of the judgment is as follows:-

"9. ……. It cannot be expected that the assessee would retain documents regarding the concealment of income. If documents for every concealment are insisted to be searched, practically the provision for block assessment would be defeated. We cannot shut our eyes to the legislative intent. Here, what was disclosed that for sale, no bills are issued, but paper slips are issued with the price. Though carbon copy is retained it didn't contain the sale price. Sale slips are destroyed then and there. Cash books are maintained by recording the 80% of the price of liquor at a later date. When such practices are adopted, nobody can expect evidence for every year in a block period. What is possible is only to have a best judgment assessment on the basis of the evidence collected during search. The assessing officer is authorised and empowered to make block assessment in a judicious manner on the basis of the materials disclosed during the search under Sec.132 of the IT Act.

10. No person other than the partner of the respondent had in unambiguous terms stated that 20% of the sales out turn is suppressed and

only 80% is recorded in the account books and it was the practice from the very beginning. So, it is just and appropriate to presume that there was uniform concealment of income in all assessment years during the block period. There is no material on record to show that the concealment of the sales out turn during any of the assessment year in the block period is lesser than the concealment detected under Sec.132 of the IT Act. There is no whisper in the statement given by the partner of the respondent or any of the employees that there was any change of the rate of concealment in any year during the block period. No good reason was given to reject the above mentioned statement of the partner and employees recorded during search. Oral evidence was corroborated by the documentary evidence. So, it is just and appropriate to conclude that the concealment was same in all the years during the block period. Adding to that we find that when it is revealed in a search under Sec.132 of IT Act that the assessee was following a particular method to conceal the income, it is just and reasonable to presume that the same practice was followed by the assessee throughout all the assessment years in the block period for the purpose of block assessment." *(emphasis added)*

16. As regards the contention of the assessee that no addition can be made in the assessment made pursuant to notice u/s 153A, based on the statement of third party placing reliance on the judgment of Hon'ble Delhi High Court in the case of *Anand Kumar Jain,* this contention cannot be accepted in view of the judgment of Hon'ble Supreme Court in *Abhisar Builwell P. Ltd* (supra), wherein it was held that once the AO assumes jurisdiction u/s. 153A, in case any incriminating material is found/ unearthed, even in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the "total income" taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns of income.

17. On merits of the addition, on mere perusal of the assessment order, it is evident that the AO made the addition based on the contents of the seized material. When the seized material was confronted to the assessee, the same was admitted by the assessee during the course of recording statement u/s. 132(4) of the Act. Thus, the AO brought a clinching evidence on record to show that the assessee is deriving income from sale of liquor, food etc. As regards the allowance of expenditure incurred to earn the income, the same cannot be allowed in view of the proviso inserted to section 69C of the Act which expressly prohibits the allowance of expenditure as a deduction in case of addition made on account of unexplained expenditure. Thus, we do not find any merit in these grounds of appeal raised by the assessee and accordingly appeal is dismissed.

18. In the result, appeal of the assessee is dismissed.

19. Our findings in the above appeal in ITA No. 517/Coch/2023 shall apply *mutatis mutandis* to the appeals in ITA Nos. 518, 519 & 520 /Coch/ 2023 also.

20. In the result, all the appeals filed by the assessee are dismissed.

Order pronounced on 04th August, 2025 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-	Sd/-
(SONJOY SARMA)	**(INTURI RAMA RAO)**
Judicial Member	**Accountant Member**

Cochin, Dated: 04th July, 2025

vr/-

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin