

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& DR. M.L. MEENA, ACCOUNTANT MEMBER)**

**ITA. Nos: 528 to 534/Asr/2019
(Assessment Years: 2007-08 to 2013-14)**

Shri Madan Lal, S/O Sh. Bihari Lal, Model Town, Shahkot	V/S	Dy. Commissioner of Income Tax, Central Circle-1, Jalandhar
PAN No. ABFPL4650B		
(Appellant)		(Respondent)

**Appellant by : Shri Nirmal Mahajan, C.A.
Respondent by : Smt. Abha Rani Singh, CIT/DR**

(आदेश)/ORDER

Date of hearing : 09-12-2021
Date of Pronouncement : 10 -12-2021

PER BENCH:

1. These seven appeals have been preferred by the assessee against the order of the Ld. CIT(A) in penalty u/s. 221(1) arising out of penalty order dated 23.07.2018.

2. In this case, assessee is an individual deriving income from real estate business. A search operation u/s. 132 of the Income Tax Act was conducted at the business and residential premises of the assessee on 03.04.2012 . In response to the notice u/s. 153A of the Act was issued on 02.09.2013, the assessee filed return of income on 11.11.2014 declaring total income at Rs. 6,00,000/- . The assessment was framed u/s. 153A of the Act vide order dated 27.07.2016 at the total income of Rs. 66,67,71,376/- which included a few addition made on protective basis. A demand of Rs. 51,19,01,327/- was created and notice of demand u/s. 156 of the Act was served as well as penalty proceedings were initiated against the appellant.
3. Thereafter assessee filed an appeal before the Ld. CIT(A) who granted partly relief in quantum matter to the assessee.
4. Thereafter assessee preferred first statutory appeal before the Ld. CIT(A) who imposed/confirmed penalty of Rs. 50,000/- in each year against the assessee.
5. At the outset, Ld. A.R. argued that in quantum proceedings relief has been granted by the Bench and same is part of paper book at page no. 115 to 119 wherein with following observations made and relief was granted by the Coordinate Bench to the assessee.

29. Our view has recently been followed by the Hon'ble Coordinate Bench in the matter of Arch Pharmalabs Ltd. vs. ACIT ITA No. 6656/Mu./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 promptuon 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 nonest 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) initialed 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 traveled 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 orders showing some marking / initials etc. could have given a valuable input on the applicability of mind and could throw light on objectivity appliedowing 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 cannot 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 co-ordinate 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 relatable to search in captioned appeals are nonest 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.

30. In the light of the above said discussion, when the Assessment Order was passed by the Assessing Officer, than there was no prior approval in the record of the Assessing Officer, from the Addl. CIT. Further, the approval granted after passing of the order was non-est in the eyes of law as it was granted in the mechanical, stereotype manner, without assigning any reasons and without considering the draft assessment order and the assessment record. On the basis of the above, we are of the opinion that ground 11 which is common in all the appeal, is required to be allowed and the assessment order and the subsequent orders passed by the CIT appeal are required to be set aside.

31. As we have allowed the ground 11 of the assessee appeal and thereby set aside the assessment order, we deem it appropriate not to adjudicate the remaining grounds of appeal raised by the Assessee in the present set of appeals.

32. In the result, all the appeals of the Assessee are allowed.

6. Since in quantum proceedings relief has already been granted by the Co-ordinate Bench and penalty proceedings are consequential to the quantum proceedings and after going through the Co-ordinate Bench order dated

16.08.2021, we direct the Assessing Officer to delete the penalty in all seven appeals filed by the assessee.

7. In the result, all seven appeals filed by the Assessee are allowed.

Order pronounced in Open Court on 10 - 12- 2021

Sd/-
(DR. M.L. MEENA)
ACCOUNTANT MEMBER **True Copy**
Dated 10 /12/2021

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Amritsar

- 1.Date of dictation 09 - 12 -2021
- 2.Date on which the typed draft is placed before Other Member - -2021
- 3.Date on which the approved draft comes to the Sr.P.S./P.S - -2021.
- 4.Date on which the fair order is placed before the Dictating Member for pronouncement 10 - 12 -2021
- 5.Date on which the fair order comes back to the Sr.P.S./P.S - -2021
- 6.Date on which the file goes to the Bench Clerk - -2021.
- 7.Date on which the file goes to the Head Clerk.....
- 8.The date on which the file goes to the Asstt. Registrar for signature on the order.....
- 9.Date of Despatch of the Order.....