
(2024) 06 ITAT CK 0018

Income Tax Appellate Tribunal (Delhi C Bench)

Case No: Income Tax Appeal No. 860 To 863/DEL/2021

Gurvinder Singh Duggal

APPELLANT

Vs

ACIT

RESPONDENT

Date of Decision: June 6, 2024

Acts Referred:

- Income Tax Act, 1961 - Section 69A, 69C, 115BBE, 132, 143(1), 143(2), 143(3), 147, 153A, 153C, 153D, 154, 250

Hon'ble Judges: M Balaganesh, (AM); Vimal Kumar, J

Bench: Division Bench

Advocate: Neeraj Mangla, Anu Krishna Aggarwal

Final Decision: Allowed

Judgement

1. The appeals in ITA Nos.860 to 863/Del/2021 for AYs 2012-13 and 2016-17 to 2018-19, arise out of the order of the Commissioner of Income Tax (Appeals)-24, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] dated 25.06.2021 for AY 2012-13, 30.06.2021 for AY 2016-17, 30.06.2021 for AY 2017-18, 29.06.2021 for AY 2018-19 against the orders of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.12.2019, 30.06.2021, 29.06.2021 by the Assessing Officer, ACIT, Circle-6, New Delhi (hereinafter referred to as 'Id. AO').

2. The assessee has raised the following grounds of appeal in ITA No. 860/Del/2021 for AY 2012-13:-

"1. That On the facts and circumstances of the case, the order passed by the learned CIT(A) under section 250 of the Act is bad both in the eyes of law and on facts.

2. That the Ld. CIT(A) has erred on facts and in law in sustaining the order of the Ld. AO passed under Section 154 of the Act.

3. That the Ld. CIT(A) has erred on facts and in law in upholding the order passed by the learned AO under Section 154, ignoring the fact that the same has been framed consequent to a search which itself was unlawful and invalid in the eyes of law

5. That the Ld. CIT(A) has erred on facts and in law in sustaining the addition of Rs. 40,00,000/- made by the Ld. AO on account of unexplained money under section 69A of the Act without appreciating the facts of the case and relying solely upon dumb documents.

6. That the Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs. 82,14,524/- made by the Ld. AO on account of unexplained money under section 69C of the Act, relying upon the dumb documents which are inadmissible in law, without appreciating the facts of the case.

7. That the Ld. CIT(A) has erred on facts and in law in appreciating the action of Ld. AO in invoking of provisions of section 115BBE of the Act while computing the tax payable in the case of the appellant.

8. On the facts and circumstances of the case, Ld. CIT(A) has erred, both on facts and in law, in sustaining the additions without appreciating the explanations and evidences brought on record by the appellant.

9. That the impugned CIT(A) order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.

10. The appellant craves leave to add, amend or alter any of the grounds of appeal before/at the time of hearing."

3. Identical issues in all these appeals are involved, hence they are taken up together and disposed off by this common order for the sake of convenience.

4. At the outset, we find that the assessee has raised the additional grounds stating that the approval granted by the Id Joint Commissioner of Income Tax u/s 153D of the Act in the instant case is mechanical in nature, which makes the entire search assessments framed as void ab initio. For the sake of convenience, the additional grounds raised by the assessee are reproduced below:-

"a) On the facts and Circumstances of the case and on the basis of information obtained under RTI dated 24.06.2020, the order of AO is void ab initio as the same has been passed in pursuance to a consolidated approval under 153D, which approval is not in accordance with the provisions of section 153D and hence bad in law.

b) On the facts and under the circumstances of the case the approval u/s 153D granted by JCIT is a mechanical approval and hence the assessment framed is void ab initio."

5. These additional grounds go to the root of the matter and all the facts relevant for its adjudication are already on record. Hence, in view of the decision of the Hon'ble Supreme Court in the case of NTPC Ltd reported in 229 ITR 383 (SC), these additional grounds are hereby admitted and first taken up for the purpose of adjudication.

6. We have heard the rival submissions and perused the material available on record. A search and seizure operation u/s 132 of the act was carried out in the Dawar Group of cases on 03.01.2018. A separate search warrant of authorization u/s 132 of the Act was issued in the name of the assessee also on 09.01.2018. The case of the assessee stood centralized vide order dated 20.09.2018 from ACIT, Central Circle-30(1), New Delhi to ACIT, Central Circle, Delhi. A notice u/s 153A of the Act stood issued to the assessee on 23.09.2019. The assessee for AY 2012-13 had already filed his original return of income on 28.09.2012 declaring income of ₹17,30,550/- which was duly processed u/s 143(1) on 13.12.2013. No assessment was framed either u/s 143(3) or u/s 147 of the Act for the AY 2012-13 before the date of search. In response to the notice issued u/s 153A of the Act, the assessee filed his return of income on 30.09.2019, declaring total income of ₹17,30,550/- which was the same income as was disclosed in the original return of income.

7. The assessee for AY 2016-17 had already filed his original return of income on 25.07.2016 declaring income of ₹17,16,430/- which was duly processed u/s 143(1) on 16.09.2016. No assessment was framed either u/s 143(3) or u/s 147 of the Act for the AY 2016-17 before the date of search. In response to the notice issued u/s 153A of the Act, the assessee filed his return of income on 30.09.2019, declaring total income of ₹17,16,430/- which was the same income as was disclosed in the original return of income.

8. The assessee for AY 2017-18 had already filed his original return of income on 29.11.2017 declaring income of ₹4,13,470/-. No assessment was framed either u/s 143(3) or u/s 147 of the Act for the AY 2017-18 before the date of search. In response to the notice issued u/s 153A of the Act, the assessee filed his return of income on 30.09.2019, declaring total income of ₹4,13,470/- which was the same income as was disclosed in the original return of income.

9. For the AY 2018-19, the assessee filed his original return of income on 22.10.2018 declaring total income of ₹1,50,130/- and since search was initiated on 09.01.2018, a notice u/s 143(2) of the Act was issued to the assessee on 23.09.2019, which was duly served.

10. The assessments were completed u/s 153A/ 143(3) of the Act, as the case may be, as tabulated under:-

AY	Order passed u/s	Order dated	Additions made	Assessed income
2012-13	153A	31-12-2019	18,22,000	35,52,550
2016-17	153A	31-12-2019	2,23,59,360	2,39,75,790
2017-18	153A	31-12-2019	8,82,30,197	8,86,43,667
2018-19	143(3)	31-12-2019	13,27,16,773	13,28,66,930

11. These assessments were framed after obtaining the approval from the Ld. Joint Commissioner Of Income Tax, Central Range-2, New Delhi (herein after referred to JCIT) on 30.12.2019 in terms of section 153D of the Act.

12. Later a rectification order u/s 154 of the Act was passed by the Id AO for all these assessment years as under:-

AY	Order passed u/s	Order dated	Additions made	Assessed income
2012-13	154	23-12-2020	1,40,36,524	1,57,67,074
2016-17	154	17-07-2020	2,17,45,000	2,34,61,430
2017-18	154	17-07-2020	3,15,22,053	3,19,35,523
2018-19	154	17-07-2020	1,60,07,645	1,61,57,775

13. We find that the Id AO in para 2 of his rectification order had pointed out that there has been numerical mistakes in regard to the additions made u/s 69A and 69C of the Act while passing the assessment orders and that the numerical mistakes had occurred due to consideration of wrong table of proposed addition u/s 69A and 69C of the Act of some other assessee. The Id AR vehemently argued from the above that the aforesaid rectification order passed by the Id AO itself goes to prove that the original search assessment order framed by the Id AO after getting the prior approval of Id JCIT u/s 153D of the Act becomes void ab initio in view of the fact that the Id JCIT while granting the approval had not even bothered to look into the facts and figures qua the assessee concerned and had merely approved the draft assessment order in a mechanical manner without due application of mind. Further, he drew attention to page 2 of the paper book containing the approval granted by the Id JCIT on 30.12.2019, wherein, it had been categorically mentioned that the draft assessment orders were sent to the Id JCIT on 30.12.2019 and the same were duly approved by the Id JCIT on 30.12.2019 itself. For the sake of convenience, the approval granted by the Id JCIT is reproduced below:-

Office of the Addl. Commissioner of Income Tax Central Range-02, Room No. 341, E-2, ARA Centre, 3rd Floor, Jhandewalan Extn, New Delhi -

110055

Email-delhi.addicit.cen2@incometax.gov

Tel. No. 011-23593414/Fax 011-23593413

F. No. JCIT/CR-2/2019-20/1645 Date: 30/12/2019

To,

The Assistant Commissioner of Income Tax.,

Central Circle-06,

New Delhi

Sub: Approval u/s 153D of the Income Tax Act, 1961 in the case of Sh.

Gurvinder Singh Duggal (Dawar Group) PAN-AAKPD0287E-reg:

This is in reference to your letter F. No ACIT/CC -06/2019-20/2102 dated 30.12.2019 whereby you have submitted draft order to be passed seeking approval u/s 153D of the IT Act 1961 along with assessment record in the following case as per details tabulated below: -

S No.	Name of the assessee	AY	Returned income u/s 139	Returned income u/s 153A/ 142(a)	Assessed income
1.	Shri Gurvinder Singh Duggal	2011-12	830009	830009	9830009
2.		2012-13	1730550	1730550	3552550
3.		2013-14	1110640	1110640	1310640
4.		2014-15	880310	880310	1310828
5.		2015-16	274910	274910	1040095
6.		2016-17	1716430	1716430	23975790
7.		2017-18	413470	413470	88643667
8.		2018-19	150130		132866930

Approval u/s 153D of the I.T. Act, 1961 is accorded in above mentioned case with the direction to ensure that the order should be passed well before the limitation. The assessment records are returned herewith.

Encl. As above

Joint Commissioner of Income Tax”

14. The Id AR also submitted that the meaning of “approval” as contemplated u/s 153D of the Act is that the Id JCIT is required to verify the issues raised by the Id AO in the draft assessment order, apply his mind and ascertain whether the entire facts have been appreciated properly by the Id AO together with the supporting evidences. The said approval proceeding is a quasi judicial function to be performed by the Id JCIT based on sound reasoning on due examination of the seized documents, replies filed by the assessee and the draft assessment order of the Id AO. It is highly impossible for the Ld JCIT to grant approval to all the assessment orders on the very same day on receipt of draft assessment orders for various assessment years comprising various issues. Accordingly, the Id AR submitted that the Id JCIT had granted approval by devoting very few minutes for each case in a mechanical manner u/s 153D of the Act without due application of mind by granting single approval for all the assessment years together. Accordingly, he pleaded that this type of approval cannot be treated as a valid approval contemplated u/s 153D of the Act and consequentially, the entire search assessment framed in the hands of the assessee for various assessment years under consideration requires to be quashed as void ab initio. In support of this argument, the Id AR placed heavy reliance on the decision of the coordinate bench decision of this tribunal in the case of Shiv Kumar Nayyar Vs. ACIT in ITA Nos. 1282 to 1285/Del/2020; ITA No. 1078/Del/2021 and ACIT Vs. Shiv Kumar Nayyar in ITA No. 1867/Del/2021 dated 26.07.2023 wherein, this Tribunal had placed reliance on the decision of the Hon’ble Orissa High Court in case of ACIT Vs. M/s. Serajuddin and Co. in ITA Nos. 39 to 45 of 2022 dated 15.03.2023; decision of Hon’ble Allahabad High Court in the case of PCIT Vs. Subodh Aggarwal in Income Tax Appeal No. 86/2022 dated 12.12.2022 and the decision of the Hon’ble Jurisdictional High Court in the case of ACIT Vs. Anju Bansal in ITA 368/2023 dated 13.07.2023 had quashed the search assessment proceedings as there was no valid approval u/s 153D by the Id JCIT.

15. Per contra, the Ld. DR vehemently argued that the role of Id. JCIT, Central Range is totally different from the role of a JCIT in the normal range. She argued that in a Central Range, the Id. JCIT is involved in the search assessment proceedings right from the time of receipt of appraisal report from the Investigation Wing and is involved with the Ld. AO from time to time while issuing various questionnaires to the assessee. The Id. JCIT in Central Range also examine the seized documents in detail immediately after receipt of the appraisal report and provides able assistance to the Ld. AO about the interpretation of the said seized documents while issuing questionnaires to assessee, examining the replies filed by the assessee and drawing conclusions thereon. Hence, it is very easy for the Id. JCIT to grant approval of the draft assessment order on the same day since he is involved with the assessment proceedings right from the inception. Accordingly, he argued that the objection

raised by the Ld. AR has no force. Further, the Ld. DR vehemently argued that bare reading of provisions of section 153D of the Act talks only about existence of approval from the Id. JCIT. There is no mention of application of mind on the part of the Id. JCIT or the approving authority in the said section. The expression 'application of mind' is only provided by the judicial decisions and not provided in the statute. Hence the Ld. DR argued that literal interpretation is to be given to the provisions of section 153D of the Act which does not provide for application of mind of the approving authority and hence any other interpretation contrary to the same would only result in re-writing the law. The Ld DR also argued that the assessee files details at the last moment and that is why the approval is obtained from Id JCIT in the last moment. The Ld DR also argued that the Id. JCIT or Id. Additional CIT does not look into the figures and even if there are mistakes in the figures, the same would not vitiate the assessment proceedings.

16. We find, as per the scheme of the Act, for framing search assessments, the Ld. AO can pass the search assessment order u/s 153A or u/s 153C of the Act only after obtaining prior approval of the draft assessment order and the conclusions reached thereon from the Id. JCIT in terms of section 153D of the Act. This is a mandatory requirement of law. The said approval granting proceedings by the Id. JCIT is a quasi judicial proceeding requiring application of mind by the Id. JCIT judiciously. In order to ensure smooth implementation of the aforesaid provisions, in consonance with the true spirit of the scheme of the Act, it is the bounden duty of the Ld. AO to seek to place the draft assessment order together with copies of the seized documents before the Id. JCIT well in time much before the due date of completion of search assessment. The Id. JCIT is supposed to examine the seized documents, questionnaires raised by the Ld. AO on the assessee seeking explanation of contents in the seized documents, replies filed by the assessee in response to the questionnaires issued by the Ld. AO and the conclusions drawn by the Ld. AO vis-à-vis the said seized documents after considering the reply of the assessee. All these functions, as stated earlier, are to be performed by the Id. JCIT in a judicious way after due application of mind. Even though as vehemently argued by the Ld. CIT-DR, the Id. JCIT is involved with the search assessment proceedings right from the time of receipt of appraisal report from the Investigation Wing, still, the Id. JCIT, while granting the approval u/s 153D of the Act has to independently apply his mind de hors the conclusions drawn either by the Investigation Wing in the appraisal report or by the Ld. AO in the draft assessment order. The copy of the appraisal report submitted by the Investigation Wing to the Ld. AO and Id. JCIT are merely guidance to the Ld. AO and are purely internal correspondences on which the assessee does not have any access. Moreover, the Act mandates the Ld. AO to frame the assessment after getting prior approval from Id. JCIT u/s 153D of the Act. The Id. JCIT getting involved in the search assessment proceedings right from inception does not have any support from the provisions of the Act as no where the Act mandates so. The scheme of the Act mandates due application of mind by the Ld.

AO to examine the seized documents independently dehors the appraisal report of the Investigation Wing and seek explanation/clarifications from the assessee on the contents of the seized documents. When the scheme of the Act provides for a leeway to both the Ld. AO as well as the Id. JCIT to even ignore the conclusions drawn in the appraisal report by the Investigation Wing and take a different stand in the assessment proceedings, the fact of Id. JCIT getting involved in the search assessment proceedings right from the receipt of copy of appraisal report, as argued by the Ld. CIT DR, has no substance. In other words, irrespective of the conclusions drawn in the appraisal report by the Investigation Wing, both the Ld. AO and the Id. JCIT are supposed to independently apply their mind in a judicious way before drawing any conclusions on the contents of the seized documents while framing the search assessments. As far as the argument of the Ld. CIT DR that the details were normally filed by the assessee at the last moment is concerned, the Id. AO has got every right to reject the said replies if not filed within the stipulated time. It is not the case of the revenue that the details were filed by the assessee in the instant case at the last moment. Even if it is so, as stated above, it is the prerogative of the Id. AO to accept the said letter containing details or reject the same as it was not filed within the stipulated time. On the contrary, if the Id. AO himself grants time to the assessee to furnish the details till the last moment, then no fault could be attributed to the assessee. In such circumstances, the only irresistible conclusion that could be drawn is that the Id. AO is not serious about the statutory deadlines provided in the Act. In our considered opinion, if the arguments of the Ld. CIT DR are to be appreciated that the Id. JCIT need not apply his mind while granting approval of the draft assessment orders u/s 153D of the Act as it is not provided in section 153D of the Act, then it would make the entire approval proceedings contemplated u/s 153D of the Act otiose. The law provides only the Ld. AO to frame the assessment, but, certain checks and balances are provided in the Act by conferring powers on the Id. JCIT to grant judicious approval u/s 153D of the Act to the draft assessment orders placed by the Ld. AO.

17. Let us now examine whether in the aforesaid background of the scheme of the Act, whether the approval in terms of section 153D of the Act has been granted by the Id. JCIT in a judicious way after due application of mind or not, in the instant case.

18. We have gone through the approval granted by the Id. JCIT on the date mentioned in the table hereinabove u/s 153D of the Act. The said approval letter clearly states that a letter dated 30.12.2019 was filed by the Ld. AO before the Id. JCIT seeking approval of draft assessment order u/s 153D of the Act. The Id. JCIT has accorded approval for the said draft assessment orders on the very same day i.e., on 30.12.2019 for various assessment years. In any event, whether it is humanly possible for an approving authority like the Id. JCIT to grant judicious approval u/s 153D of the Act for all the assessment years on a single day is the subject matter of dispute before us. Further, section 153D of the Act provides that approval has to be

granted for each of the assessment year whereas, in the instant case, the Id. JCIT has granted a single approval for all assessment years put together.

19. Further, we find that similar issue has been addressed by the Hon'ble Jurisdictional High Court in the case of PCIT vs. Anju Bansal in ITA 368/2023 order dated 13.07.2023 wherein, under similar circumstances, the Hon'ble Delhi High Court categorically held that statutory approval given by a quasi judicial authority without due application of mind as contemplated in section 153D of the Act would be fatal to the entire search assessment proceedings. The relevant operative part of the said order is reproduced below:-

"12. This aspect was brought to the fore by the Tribunal in the impugned order. The Tribunal, thus, concluded there was a complete lack of application of mind, inasmuch as the ACIT, who granted approval, failed to notice the said error.

12.1 More particularly, the Tribunal notes that all that was looked at by the ACIT, was the draft assessment order.

13. In another words, it was emphasised that the approval was granted without examining the assessment record or the search material. The relevant observations made in this behalf by the Tribunal in the impugned order are extracted hereafter:

"17.1 However, in the present case , we have no hesitation in stating that there is complete non -application of mind by the Learned Addl. CIT before granting the approval. Had there been application of mind, he would not have approved the draft assessment order, where the returned income of Rs.87,20,580/ -, Similarly, when the total assessed income as per the AO comes to Rs. 16,69,42,560/ -, the Addl. CIT could not have approved the assessed income at Rs. 1,65,07,560/ - had he applied his mind. The addition of Rs. 15,04,35,000/ - made by the AO in the instant case is completely out of the scene in the final assessed income shows volumes .

17.2 Even the factual situation is much worse than the facts decided by the Tribunal in the case of Sanjay Duggal (supra). In that case, at least the assessment folders were sent whereas in the instant case, as appears from the letter of the Assessing Officer seeking approval, he has sent only the draft assessment order without any assessment records what to say about the search material. As mentioned earlier, there are infirmities in the figures of original return of income as well as total assessed and the Addl. CIT while giving his approval has not applied his mind to the figures mentioned by the AO. Therefore, approval given in the instant case by the Addl. CI T, in our opinion, is not valid in the eyes of law. We, therefore, hold that approval given u/s 153D has been granted in a mechanical manner and without application of mind and thus it is invalid and bad in law and consequently vitiated the assessment orde r for want of valid approval u/s 153D of the Act.

In view of the above discussion, we hold that the order passed u/s 153A r.w.s. 143(3) has to be quashed, thus ordered accordingly. The ground raised by the Assessee is accordingly allowed".

[Emphasis is ours]

14. In this appeal, we are required to examine whether any substantial question of law arises for our consideration.

15. Having regard to the findings returned by the Tribunal, which are findings of fact, in our view, no substantial question of law arises for our consideration. The Tribunal was right that there was absence of application of mind by the ACIT in granting approval under Section 153D . It is not an exercise dealing with a immaterial matter which could be corrected by taking recourse to Section 292B of the Act.

16. We are not inclined to interdict the order of the Tribunal."

20. In view of the aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, we have no hesitation in holding that the approval u/s 153D of the Act has been granted by the Id. JCIT in the instant case before us in a mechanical manner without due application of mind, thereby making the approval proceedings by a high ranking authority, an empty ritual. Such an approval has neither been mandated by the provisions of the Act nor endorsed by the decisions of the Hon'ble Orissa High Court; Hon'ble Allahabad High Court and Hon'ble Jurisdictional High Court (Delhi High Court) referred to supra. Hence, we find lot of force in the arguments advanced by the Ld. AR in support of the additional grounds raised for all assessment years under consideration before us. Accordingly, the Additional Grounds raised by the assessee for all the assessment years under consideration are hereby allowed.

21. Since, pursuant to the allowing of the additional grounds, the entire search assessment framed in the hands of the assessee is to be declared illegal and bad in law, the other legal grounds and grounds on merits raised by the assessee for various assessment years need not be gone into as adjudication of the same would be merely academic in nature and, hence, they are left open.

22. In the result, the appeals of the assessee are allowed.