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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision:13.07.2023**

+ **ITA 368/2023**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Appellant
Through: Mr Sanjay Kumar, Sr. Standing
Counsel with Ms Eash Kadian and
Hemlata Rawat, Advs.

versus

ANUJ BANSAL Respondent
Through: Mr Kapil Goel with Mr Sandeep
Goel, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

CM No.34969/2023 *[Application filed on behalf of the appellant/revenue seeking condonation of delay of 180 days in re-filing the appeal]*

1. This is an application moved on behalf of the appellant/revenue seeking condonation of delay in re-filing the appeal.

1.1 According to the appellant/revenue, there is a delay of 180 days in re-filing the appeal.

2. Counsel for the respondent/assessee says that he does not oppose the prayer made in the application.

3. Accordingly, the prayer made in the application is allowed.

4. The application is disposed of, in the aforesaid terms.

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5. This appeal concerns Assessment Year (AY) 2017-18.
6. The appellant/revenue via this appeal seeks to assail the order dated 29.04.2022 passed by the Income Tax Appellate Tribunal [in short, 'Tribunal'].
7. The Tribunal has via the impugned order set aside the additions made qua the income of the respondent/assessee *inter alia*, on the ground that there was no application of mind by the Additional Commissioner of Income Tax [In short, "ACIT"] in granting approval under Section 153D of Income Tax Act, 1961, [in short, 'the Act'].
8. To be noted, an assessment order was framed qua the respondent/assessee under Section 153A, read with Section 143(3) of the Act.
 - 8.1 This order was carried in appeal by the respondent/assessee, right up till the Tribunal.
9. Insofar as the Assessing Officer (AO) was concerned, he made certain additions against the returned income.
 - 9.1 The respondent had declared an income amounting to Rs. 87,20,580/-. However, while making the additions, strangely, the AO noted that the returned income was Rs. 11,00,460/-.
10. There were two additions made by the AO. The first addition was made qua cash deposited in the bank, amounting to Rs. 15,04,35,000/-. The second addition was made with regard to cash introduced via an entry operator i.e., one, Mr Vipin Garg. The amount added *qua* this aspect was pegged at Rs. 1,54,07,100/-.
11. Despite these additions, which would have taken the assessed income



well beyond what was crystallised by the AO i.e., 1,65,07,560/-, the ACIT failed to notice the error.

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 income 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. CIT, 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 order 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. 43(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.

17. Accordingly, the appeal is closed.

18. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

JULY 13, 2023/RV

Click here to check corrigendum, if any