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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 285/2024 & CM APPL 28994/2024**
PR. COMMISSIONER OF INCOME TAX -15..... Appellant
Through: **Mr. Ruchir Bhatia, Sr. SC**
alongwith Mr. Anant Mann, Jr.
SC.

versus
SHIV KUMAR NAYYAR Respondent
Through: **Mr. Salil Kapoor, Mr. Sumit**
Lalchandani, Ms. Ananya
Kapoor and Mr. Vibhu Jain,
Advocates

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV

% **ORDER**
15.05.2024

PER: PURUSHAINDRA KUMAR KAURAV, J.

1. The solitary question which stands posited before us for adjudication pertains to whether, under the facts of the present case, the specified authority has granted approval in accordance with the mandate of Section 153D of the Income Tax Act, 1961 [“Act”]?
2. The instant appeal, at the instance of the Revenue, impugns the order of the Income Tax Appellate Tribunal [“ITAT”] dated 26.07.2023, whereby, the assessment order has been held to be illegal for lack of appropriate approval under Section 153D of the Act.
3. As per record, the appeal pertains to Assessment Year [“AY”] 2015-16. The dispute essentially emanates from a search and seizure operation which was conducted on 18.11.2016 under Section 132 of



the Act by the Investigation Wing in Nayar Group of cases, including the residential premises of the assessee. The said operation was followed by a survey operation under Section 133A of the Act.

4. Pursuant to the aforementioned search, an order under Section 127 of the Act was passed which led to centralization of the case of the assessee. Consequently, a notice under Section 153A of the Act was issued to the assessee on 22.09.2017. In response to the said notice, the assessee filed its Income Tax Return [**"ITR"**] on 14.08.2018, declaring an income of ₹18,48,450/- and the same was processed as per the provisions of Section 143(1) of the Act. Subsequently, the case of the assessee was picked up for scrutiny assessment and a notice under Section 143(2) was duly issued.

5. Thereafter, on 30.12.2018, an assessment order was passed by the assessing officer [**"AO"**] under Section 153A read with Section 143(3) of the Act, whereby, the total taxable income of the assessee was pegged at ₹5,19,85,970/-. Being aggrieved by the additions made by the AO, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) [**"CIT(A)"**]. *Vide* order dated 09.07.2021, the CIT(A), while partly allowing the appeal of the assessee, deleted certain additions made by the AO.

6. However, the Revenue preferred an appeal against the order of the CIT(A) before the ITAT, wherein, the approval under Section 153D of the Act by the competent authority was found to be flawed and mechanical in nature and as a sequitur, the entire search assessment was declared to be illegal.

7. Learned counsel for the Revenue submitted that there is no infirmity in the approval granted by the concerned authority and therefore, the ITAT has erred in declaring the assessment order to be



invalid. He contended that merely because the approval was granted on the same day when the draft assessment orders were sent by the AO, the same cannot be a ground to hold that the approval was accorded without any application of mind. According to him, since the authority granting approval has been involved in the assessment proceedings from the initial days, the same cannot be divested of its right to accord approval on the same day. He, therefore, mainly proposed the following substantial question of law for our consideration:-

“Whether the ITAT has erred in law, in considering the Assessment Order under Section 153A of the Act, as invalid and bad in law by stating that the approval granted by the Range head under section 153D of the Act is void as the same was granted in a mechanical manner without application of mind?”

8. *Per contra*, learned counsel for the assessee vehemently opposed the submissions. He submitted that the competent authority has granted approval in a mechanical manner inasmuch as the draft assessment orders for multiple AYs were accorded approval on the same date on which they were sent, which reflects a complete non-application of mind. It was, therefore, contended that the ITAT has correctly relied upon the decision of this Court in **PCIT v. Anuj Bansal** [ITA 368/2023] as well as various other High Courts to reach the conclusion that the approval was given in the teeth of the provisions of Section 153D of the Act.

9. We have heard the learned counsels appearing on behalf of the parties and perused the record.

10. Before embarking upon the analysis of the factual scenario of the instant appeal, we deem it apposite to examine the underlying



intent of the relevant provision of the Act i.e., Section 153D, which is culled out as under:-

“153-D. Prior approval necessary for assessment in cases or requisition.—No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of [sub-section (1) of Section 153-A] or the assessment year referred to in clause (b) of sub-section (1) of Section 153-B, except with the prior approval of the Joint Commissioner :

Provided that nothing contained in this section shall apply where the assessment or reassessment order, as the case may be, is required to be passed by the Assessing Officer with the prior approval of the [Principal Commissioner or Commissioner] under sub-section (12) of Section 144-BA.”

11. A plain reading of the aforesaid provision evinces an uncontrived position of law that the approval under Section 153D of the Act has to be granted for “each assessment year” referred to in clause (b) of sub-section (1) of Section 153A of the Act. It is beneficial to refer to the decision of the High Court of Judicature at Allahabad in the case of **PCIT v. Sapna Gupta** [2022 SCC OnLine All 1294] which captures with precision the scope of the concerned provision and more significantly, the import of the phrase- “each assessment year” used in the language of Section 153D of the Act. The relevant paragraphs of the said decision are reproduced as under:-

“13. It was held therein that if an approval has been granted by the Approving Authority in a mechanical manner without application of mind then the very purpose of obtaining approval under Section 153D of the Act and mandate of the enactment by the legislature will be defeated. **For granting approval under Section 153D of the Act, the Approving Authority shall have to apply independent mind to the material on record for "each assessment year" in respect of "each assessee" separately. The words 'each assessment year' used in Section 153D and 153A have been considered to hold that effective and proper meaning has to be given so that underlying legislative intent as per scheme of assessment of Section 153A to 153D is fulfilled.** It was held that the "approval" as contemplated under 153D of the Act,



requires the approving authority, i.e. Joint Commissioner to verify the issues raised by the Assessing Officer in the draft assessment order and apply his mind to ascertain as to whether the required procedure has been followed by the Assessing Officer or not in framing the assessment. The approval, thus, cannot be a mere formality and, in any case, cannot be a mechanical exercise of power.

19. The careful and conjoint reading of Section 153A(1) and Section 153D leave no room for doubt that approval with respect to "each assessment year" is to be obtained by the Assessing Officer on the draft assessment order before passing the assessment order under Section 153A."

[Emphasis supplied]

12. It is observed that the Court in the case of *Sapna Gupta (supra)* refused to interdict the order of the ITAT, which had held that the approval under Section 153D of the Act therein was granted without any independent application of mind. The Court took a view that the approving authority had wielded the power to accord approval mechanically, inasmuch as, it was humanly impossible for the said authority to have perused and appraised the records of 85 cases in a single day. It was explicitly held that the authority granting approval has to apply its mind for "each assessment year" for "each assessee" separately.

13. Reliance can also be placed upon the decision of the Orissa High Court in the case of **Asst. CIT v. Serajuddin and Co.** [2023 SCC OnLine Ori 992] to understand the exposition of law on the issue at hand. Paragraph no.22 of the said decision reads as under:-

"22. As rightly pointed out by learned counsel for the assessee there is not even a token mention of the draft orders having been perused by the Additional Commissioner of Income-tax. The letter simply grants an approval. In other words, even the bare minimum requirement of the approving authority having to indicate what the thought process involved was is missing in the aforementioned approval order. While elaborate reasons



need not be given, there has to be some indication that the approving authority has examined the draft orders and finds that it meets the requirement of the law. As explained in the above cases, the mere repeating of the words of the statute, or mere "rubber stamping" of the letter seeking sanction by using similar words like "seen" or "approved" will not satisfy the requirement of the law. This is where the Technical Manual of Office Procedure becomes important. Although, it was in the context of section 158BG of the Act, it would equally apply to section 153D of the Act. There are three or four requirements that are mandated therein, (i) the Assessing Officer should submit the draft assessment order "well in time". Here it was submitted just two days prior to the deadline thereby putting the approving authority under great pressure and not giving him sufficient time to apply his mind ; (ii) the final approval must be in writing ; (iii) the fact that approval has been obtained, should be mentioned in the body of the assessment order.”

[Emphasis supplied]

14. During the course of arguments, learned counsel for the assessee apprised this Court that the Special Leave Petition preferred by the Revenue against the decision in the case of *Serajuddin (supra)*, came to be dismissed by the Supreme Court *vide* order dated 28.11.2023 in SLP (C) Diary no. 44989/2023.

15. A similar view was taken by this Court in the case of *Anuj Bansal (supra)*, whereby, it was reiterated that the exercise of powers under Section 153D cannot be done mechanically. Thus, the salient aspect which emerges from the abovementioned decisions is that grant of approval under Section 153D of the Act cannot be merely a ritualistic formality or rubber stamping by the authority, rather it must reflect an appropriate application of mind.

16. In the present case, the ITAT, while specifically noting that the approval was granted on the same day when the draft assessment orders were sent, has observed as under:-

“10. We have gone through the approval granted by the Id. Addl. CIT on 30.12.2018 u/s 153D of the Act which is enclosed at page 36 of the paper book of the assessee. The said letter clearly states



that a letter dated 30.12.2018 was filed by the Id. AO before the Id. Addl. CIT seeking approval of draft assessment order u/s 153D of the Act. The Id. Addl. CIT has accorded approval for the said draft assessment orders on the very same day i.e., on 30.12.2018 for seven assessment years in the case of the assessee and for seven assessment years in the case of Smt. Neetu Nayyar. **It is also pertinent in this regard to refer to pages 68 and 69 of the paper book which contains information obtained by Smt. Neetu Nayyar from Central Public Information Officer who is none other than the Id. Addl. Commissioner of Income-tax, Central Range-S, New Delhi, under Right to Information Act, wherein, it reveals that the Id. Addl. CIT had granted approval for 43 cases on 30.12.2018 itself. This fact is not in dispute before us. Of these 43 cases, as evident from page 36 of the paper book which contains the approval u/s 153D, 14 cases pertained to the assessee herein and Smt. Neetu Nayyar.** The remaining cases may belong to some other assessee, which information is not available before us. In any event, whether it is humanly possible for an approving authority like Id. Addl. CIT to grant judicious approval u/s 153D of the Act for 43 cases on a single day is the subject matter of dispute before us. Further, section 153D provides that approval has to be granted for each of the assessment year whereas, in the instant case, the Id. Addl. CIT has granted a single approval for all assessment years put together.”

17. Notably, the order of approval dated 30.12.2020 which was produced before us by the learned counsel for the assessee clearly signifies that a single approval has been granted for AYs 2011-12 to 2017-18 in the case of the assessee. The said order also fails to make any mention of the fact that the draft assessment orders were perused at all, much less perusal of the same with an independent application of mind. Also, we cannot lose sight of the fact that in the instant case, the concerned authority has granted approval for 43 cases in a single day which is evident from the findings of the ITAT, succinctly encapsulated in the order extracted above.

18. Therefore, under the facts of the present case, considering the foregoing discussion and the enunciation of law settled through



judicial pronouncements discussed hereinabove, we are unable to find any substantial question of law which would merit our consideration.

19. Consequently, the appeal stands dismissed. Pending application(s), if any, are also disposed of.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 15, 2024

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