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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 447/2024**

PR. COMMISSIONER OF INCOME TAX -7Appellant

Through: Mr. Ruchir Bhatia, SSC with
Mr. Anant Mann, Mr. Pratyaksh
Gupta, Advs.

versus

TIRUPATI BUILDINGS & OFFICES PVT LTD.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **20.08.2024**

CM APPL. 47336/2024 (8 Days Delay in Refiling)

Bearing in mind the disclosures made, the delay in refiling the appeal is condoned.

The application shall stand disposed of.

ITA 447/2024

1. Having heard Mr. Bhatia, learned counsel appearing for appellant and on going through the order rendered by the **Income Tax Appellate Tribunal**¹, we find that the appeal fails to raise any substantial question of law.

2. We note that the assessment under Section 153A of the **Income Tax Act, 1961**² has ultimately come to be annulled by the Tribunal bearing in mind the evident non-application of mind while according approval as contemplated under Section 153D of the Act.

3. While dealing with an identical issue, we had in ITA 243/2023 enunciated the legal position in the following terms:-

¹ Tribunal

² Act



“10. The brief controversy involved in the present appeals pertain to whether the competent authority has granted approval under Section 153D of the Act in an inappropriate manner, *dehors* the settled position of law?

11. Recently, in the case of **Pr. Commissioner of Income Tax -15 v. Shiv Kumar Nayyar** [ITA 285/2024], we had an occasion to deal with an almost identical issue i.e., grant of approval under Section 153D of the Act in a mechanical manner and without application of mind. The relevant discussion of the said decision in Paragraph nos. 10 to 15, is reproduced hereunder as: -

“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."

[Emphasis supplied]

4. A perusal of the discussion extracted hereinabove would lead us to conclude that that approval under Section 153D cannot be accorded



in a casual or mechanical manner. Rather, the said exercise involves due application of mind which must be reflected in the order of approval passed by the concerned statutory authority.

5. Accordingly, and for all the aforesaid reasons, the appeal fails and shall stand dismissed.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

AUGUST 20, 2024/*neha*