

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW "B" BENCH LUCKNOW**

**BEFORE SHRI P.K. BANSAL, VICE PRESIDENT AND  
SHRI C.M. GARG, JUDICIAL MEMBER**

ITA No.167/Lkw/2016  
Assessment Year 2011-12

|   |    |   |
|---|----|---|
| AAA Paper Marketing Ltd.<br>26/6 East Patel Nagar,<br>New Delhi- 110008 | Vs | ACIT, Central Circle-I,<br>10/503, Allen Ganj,<br>Kanpur (U.P.) 208 001 |
| PAN AACCS 4575 K<br>(Appellant)   |    | (Respondent)  |

ITA No.168/Lkw/2016  
Assessment Year 2006-07

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| Sidhibhoomi Alloys Ltd.,<br>26/6 East Patel Nagar,<br>New Delhi - 110008 | Vs | ACIT, Central Circle-I,<br>10/503, Allen Ganj,<br>Kanpur (U.P.) 208 001 |
| PAN AAACR 8463 P<br>(Appellant)  |    | (Respondent)  |

ITA No.321/Lkw/2016  
Assessment Year 2006-07

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| DCIT, Central Circle-I,<br>Kanpur | Vs | Sidhibhoomi Alloys Ltd.,<br>2 <sup>nd</sup> Floor, East Patel,<br>New Delhi - 110008<br><br>PAN AAACR 8463 P |
| (Appellant)                       |    | (Respondent)   |

ITA No.322/Lkw/2016  
Assessment Year 2010-11

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|-----------------------------------|----|--|
| DCIT, Central Circle-I,<br>Kanpur | Vs | Sidhibhoomi Alloys Ltd.,<br>2 <sup>nd</sup> Floor, East Patel,<br>New Delhi - 110008<br><br>PAN AAACR 8463 P |
| (Appellant)                       |    | (Respondent)   |

ITA No.192/Lkw/2016  
Assessment Year 2011-12

|                                   |    |   |
|-----------------------------------|----|---|
| DCIT, Central Circle-I,<br>Kanpur | Vs | Shri Apurva Goel, Rama House<br>Station road Kiratpur,<br>Distt., Bijnor (U.P.)<br><br>PAN AHTPG 8516 H |
| (Appellant)                       |    | (Respondent)  |

|                       |                           |
|-----------------------|---------------------------|
| Assessee by           | Shri P.C. Yadav, Advocate |
| Revenue by            | Shri Vivek Mishra, CIT DR |
| Date of hearing       | 26/04/2017                |
| Date of pronouncement | 22./04/2017               |

**ORDER**

**PER: CHANDRA MOHAN GARG: JM**

1. The above captioned cross appeals by the assessee as well as by the Department are pertain to similar search and seizure operation u/s 132 of the Income Tax Act, 1961 (for short the "Act"), which was carried out on



22.09.2011 therefore, these are being clubbed and we are disposing them together by this consolidated order.

Application for assessee under Rule 27 of the Income Tax Appellate Tribunal Rules, 1963 (hereinafter ITAT Rules) in ITA Nos. 321, 322 & 192/Lkw/2016

2. We have heard argument of both the sides and carefully considered the relevant material available on record of the Tribunal. Ld. counsel of the assessee-respondent submitted that the assessee want to invoke the provision of ITAT Rules 27 to challenge the order of the CIT(A) on following grounds:

*"The Ld. CIT(A) has erred in law and on facts in affirming the jurisdiction of the Assessing Officer under section 153A, ignoring that the Additional Commissioner has granted the approval in a mechanical manner, the CIT(A) has further erred in not appreciating that no proceedings were pending on the date of search and the entire assessment has been framed without any reference to incriminating material found as a result of search."*

3. The Ld. counsel further submitted that under Rule 27 of the ITAT Rules, a legal plea, which was not raised by the assessee before the lower authorities, can be raised at any stage by the proceeding before the Tribunal as per proposition laid down by various decision and orders including order of the ITAT 'D' Bench Delhi dated 19.05.2014 in the case of DCIT Vs. Jubilant Enpro Pvt. Ltd. in ITA No. 560/Del/2010 Assessment Year 1998-99.

4. In reply to the above, Ld. DR strongly opposed to admission and above noted ground and submitted that the legal plea which was not raised before the Assessing Officer and CIT(A) cannot raised before the Tribunal at the appellate stage under any provision including Rule 27 of ITAT Rules.

5. On careful consideration of rival submission, we are of the view that in the similar situation ITAT Delhi 'D' Bench in the case of Jubilant Enpro Pvt. Ltd. (Supra) held as follows :



"13. Thus, it can be seen from the above discussion that we have reversed the order of the Ld. CIT(A) by restoring the penalty u/s 271(1)(c) of the Act in respect of three items, viz., Interest of Rs.2,996/- learned but not declared as income; amount of Income-tax paid at Rs.71,432/- claimed as deduction by clubbing with Interest expenditure ; and interest on late deposit of wealth-tax amounting to Rs. 19,084/-claimed as deduction by clubbing with Interest expenditure..

14.1. The assessee has filed an application under Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963 requesting for the deletion of entire penalty on a legal issue, being the final determination of total income of the assessee u/s 115JA of the Act and the additions sustained pertaining only to the income computed under the normal provisions of the Act. The Id. AR relied on the judgment of the Hon'ble jurisdictional High Court in CIT Vs Nalwa Sons Investment Ltd. (2010) 327 ITR 543 (Del) to propel this submission.

14.2. Before proceeding with the matter on merit, it would be apposite to first decide about the maintainability or otherwise of such application. Rule 27 of ITAT Rules, 1963 with its marginal note reads as under:-

*'Respondent may support order on grounds decided against him.*

*The respondent, though he may not have appealed, may support the order appealed against on any of the grounds decided against him.'*

14.3. The effect of this rule is that a respondent has been entitled to support the order on the ground which has been decided against him. The underlying idea and the spirit of Rule 27 is to arm a respondent, in an appeal filed by the plaintiff, with an option to contest unfavourable decision of the CIT(A) on the aspect(s) of an issue, the final decision on which issue has been delivered in his favour. Take an instance of first appellate authority deciding the legal issue of reopening of an assessment against the assessee but deleting the addition on merits in favour of the assessee. When the Revenue files appeal against this order before the tribunal, it will naturally assail the finding of the CIT(A) qua the deletion of addition on merits. Notwithstanding the fact that the respondent assessee did not file any appeal against the order



*passed by the CIT(A), shall still be entitled under Rule 27 of the ITAT Rules, 1963, to support the conclusion of the order of the first appellate authority, being the deletion of addition, by challenging the finding of the. CIT(A) which was delivered against him on the legal issue of reopening of assessment.*

*14.4. The mandate of Rule 27 is to be seen in contradistinction to the provisions of section 253(4) of the Act, which empower the respondent, on an appeal filed by the plaintiff, to file cross objection against any part of the order. At this stage, it may be fruitful to take note of the prescription of sec. 253(4), which provides that: The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) or the Assessing Officer in pursuance of the directions of the Dispute Resolution Panel has been preferred under sub-section (1) or sub-section (2) or sub-section (2A) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof; within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Assessing Officer (in pursuance of the directions of the Dispute Resolution Panel) or Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3) or sub-section (3A).' When we consider Rule 27 of the ITAT rules in juxtaposition to sec. 253(4) of the Act, the position which emerges is that whereas rule 27 is a remedy to the respondent to support the ultimate favourable conclusion of the CIT(A) by challenging such aspects of the issue which were decided against him, a cross objection u/s 253(4) of the Act is a remedy to the respondent to challenge' the ultimate unfavorable conclusion of the CIT(A).*

*14.5. A cursory look at the language of rule 27 transpires that a respondent has been empowered to support the order appealed against on any of the grounds decided against him. In other words, the challenge can be made by a respondent only in respect of a ground decided against him'. In such circumstances, a question arises that if there is no decision at all of the CIT(A) on a particular aspect, which is otherwise germane to the overall issue decided in favour of the respondent, can the respondent espouse such*



*aspect under rule 27 in an appeal filed by the plaintiff ? If we go by the literal interpretation of the Rule, then the answer is in negative that unless the ground is not decided against' the respondent, he cannot take recourse to this provision. However, it is of paramount importance to keep in mind the fundamental object of enshrining rule 27, being giving an opportunity to the respondent to support the impugned order in an appeal filed by the plaintiff. A pragmatic approach on consideration of the object of such Rule, in our considered opinion, necessitates the adoption of liberal interpretation that when a particular issue is decided in favour of the respondent and the plaintiff has come up in appeal against such decision on the issue, then all the relevant aspects having bearing on the overall issue, even though not specifically decided against the plaintiff, should be open for challenge by the respondent under the rule. If the respondent is debarred from raising that aspect of the issue, which was not taken up before the first appellate authority or taken up but remained undecided, and the appeal of the plaintiff is allowed, the respondent would be rendered without remedy. It has been noticed above that a respondent is not entitled to file cross objection on such aspects of the issue u/s 253(4) of the Act, the scope of which provision is circumscribed to challenging the ultimate unfavourable conclusion drawn by the CIT(A). In common parlance, when an issue is decided in favour of one party whether on one aspect or the other, it is not expected of such a party to challenge the order by asserting that the decision should have been given in his favour on that issue on all the aspects and not on that particular aspect on which it was given. When an appeal is filed against such favourable decision on the issue by the other party, and suppose the impugned order is not sustainable on that aspect of the issue on which it was decided, but on some other aspect which was not decided by the first appellate authority and the respondent is restrained from taking up such aspect on the reasoning that Rule 27 is not applicable on such aspect, the respondent would stand nowhere. In view of the foregoing discussion, it is clear that hyper technicalities of rule 27 cannot come in the way of the deciding such aspects of the issue taken up by the respondent before the tribunal which were germane to the main issue but were not contested or decided provided no fresh investigation of facts is required for rendering decision on such aspects."*

6. In view of above, legal ground raised by the assessee by invoking Rule 27 of the ITAT Rules in all three appeals is admitted for consideration on



adjudication. Consequently, applications of the assessee in all three appeals of the Revenue are allowed.

7. It is pertinent to note that in ITA Nos. 167/Lkw/2016 for Assessment Year 2011-12 and in ITA No. 168/Lkw/2016 for Assessment Year 2006-07 the respective assessee has raised identical legal ground by way of Ground No. 2 which reads as under:-

*"2. The action of CIT(A) affirming the assessment under section 153A is wrong in as much as the same is not in consonance with the settled position of law vis-à-vis search cases."*

8. Since legal ground raised by invoking Rule 27 of ITAT Rules in all three Revenue's appeals as well as Ground No. 2 of the assessee in other two appeals are identical and similar issues have been agitated, therefore, we are adjudicating them together. For the sake of clarity and brevity first of all we are taking up ITA No. 321/Lkw/2016.

9. We have heard the argument of both the sides and carefully considered the relevant material available on record of the Tribunal. Ld. counsel of the assessee submitted that in the present case search and seizure operation was conducted on 22.09.2011, notice u/s 153A of the Act was issued on 06.06.2013, assessee company filed its reply on 04.07.2013 stating that original return has filed in pursuant to the notice u/s 153A of the Act, notice u/s 143(2) and 142(1) of the Act were issued on 22.08.2013, therefore, notice u/s 142(1) of the Act alongwith questionnaire was issued on 29.11.2013, the Assessing Officer issued show cause notice on 21.03.2014, the assessee company filed its reply along with various details and documents dated 13.03.2014 & 26.03.2014, approval from ACIT was taken on 31.03.2014 in mechanical manner and very same day assessment order were passed u/s 143(3) of the Act read with 153A of the Act. Ld. counsel vehemently pointed out that the date of

approval u/s 153D of the Act and the date of assessment order are same i.e. 31.03.2014 and while granting approval the ACIT first of all severely criticized this approach of the Assessing Officer and had last made an observation that the approval has been granted in a mechanical manner. The Ld. counsel placing reliance on the various decisions including decision of the Hon'ble Bombay High Court in the case of CIT Vs. Akil Gulamani Somji reported in 80CCH 0053 (Bom,) (HC) and order of the ITAT Mumbai Bench in the case of Smt. Shree Lekha Damani Vs. DCIT reported in 125 DTR 0263 (Mum. Trib.) submitted that the provision of Section 153D are mandatory and non compliance or disobedience to the same renders consequent assessment order void *ab initio*.

10. In reply to the above, the Ld. CIT, DR strongly supported the action of the Assessing Officer and submitted that admittedly and undisputedly there is an approval u/s 153D of the Act prior to framing of assessment order u/s 143(3) r.w.s. 153A of the Act. He strenuously contended that there is no mandate of law that the approval cannot be taken on the very same day on which assessment order has been passed.

11. On careful consideration of above rival submissions, we are of the view that in the case of Smt. Shree Lekha Damani (Supra) held as follows:

*"12. Coming to the facts of the case in hand in the light of the analytical discussion hereinabove and as mentioned elsewhere, the Addl. Commissioner has showed his inability to analyze the issues of draft order on merit clearly stating that no much time is left inasmuch as the draft order was placed before him on 31.12.2010 and the approval was granted on the very same day. Considering the factual matrix of the approval letter, we have no hesitation to hold that the approval granted by the Addl. Commissioner is devoid of an 'application of mind', is mechanical and without considering the materials on record. In our considered opinion, the power vested in the Joint Commissioner/Addl. Commissioner to grant or not to grant approval is coupled with a duty. The Addl. Commissioner/Joint*





*Commissioner is required to apply his mind to the proposals put up to him for approval in the light of the material relied upon by the AO. The said power cannot be exercised casually and in a routine manner. We are constrained to observe that in the present case, there has been no application of mind by the Addl. Commissioner before granting the approval. Therefore, we have no hesitation to hold that the assessment order made u/s. 143(3) of the Act r.w. Section 153A of the Act is bad in law and deserves to be annulled. The additional ground of appeal is allowed."*

12. In view of above dicta when we logically analyzed the approval of draft assessment order provided by the ACIT, Kanpur dated 31.03.2014 then we observed that the approval has been granted with the following observations:

*"Addl. CIT(DR)/KNP/Approval U/s 153D/2013-14*

*To,*

*The Asstt. Commissioner of Income Tax, Central Circle-1*

*Kanpur*

*Sub: Approval of Draft assessment orders U/s 153A / 153C of the Income Tax Act, 1961 in the case of M/s RAMA Paper Mills Ltd. cases – Regarding-*

*Please refer to your letter bearing F No ACIT/CC-1/KNP/Approval/2013-14/661 dated 28/03/2014 which was received in this office at 07:00 PM on 30/03/2014 alongwith case records and draft assessment orders pertaining to the cases as detailed in the said letter seeking approval U/s 153D of the Income Tax Act, 1961.*

*In this regard, it is noticed that prior to submission of these draft assessment orders received, no discussion has been made at any stage of proceedings With the undersigned including at the stage of preparation finalization of Questionnaires U/s 142(1) of the Income Tax Act, 1961. Accordingly, keeping in view the limitation aspect in the matter which is going to be expired today itself, approval is accorded in the following 54 cases of RAMA Paper Mills Ltd Group of cases, solely relying on your undertaking to the effect that while completing the assessment as per*



*draft assessment order, all the observations made in the appraisal report relating to examination/investigation as also the issues identified in the course of examination of seized material were carefully considered / kept in view. The mechanical approval had to be accorded as there is hardly any time left for any discussion /consideration much less meaningful discussion including the fact that absolutely no time is available for any further enquiries/investigation because of the fact that limitation for passing and service of order in these 54 cases is expiring today itself.*

| SNo. | Name and address of the assessee | PAN          | Assessment years     |
|------|----------------------------------|--------------|----------------------|
| 1.   | Sliri Vipin Goel                 | ACEPG0981G   | 2006-07 to 2012-13   |
| 2    | Shri Arun Goel                   | AHTPG 8513C  | 2006-07 to 2012-13   |
| 3    | Sliri Apoorv'Goel                | AHTPG 8516 H | 2006-07 to 2011-12   |
| 4    | M/s Rama Agro & Food Products    | AAGFR 9509 R | 2006-07 to 2012-13   |
| 5.   | M/s Siddhbhooml Affoys Ltd       | AAACR 8463E  | 2006-07 to 2012-13   |
| 6.   | M/s Marut Aviation Pvt Ltd       | AAFPM 7523 C | 2009-10 to 2012-13   |
| 7.   | M/s D B Ice Factory              | AADHV 4335 C | 2012-13              |
| 8.   | Smt Suneeta Agarwal              | ABKPA 4469 J | 2012-13              |
| 9    | Shri RAKesh Chharia              | AAJPC5349P   | 2006-07 to 2012-13   |
| 10   | Smt Deepa Chharlia               | ABYPC306I C  | 2006-07 to 20.12-13. |

*A copy of the final order issued in the above cases alongwith office no immediately be sent to this office for record.*

*End: case record.*

*(R.K. Chaturvedi)  
Addl. Commissioner of Income  
(Central Range), Kanpur"*

*[Emphasis supported by us by underlining]"*

13. In view of above, it is amply clear that in the case in hand the ACIT observed that the mechanical approval had to be accorded as there is



hardly any time left for any discussion or consideration much less meaningful discussion including the fact that absolutely no time available for any further enquiry or investigation because of the fact that limitation for passing and service of order in the cases is expired today itself i.e. 31.03.2014 on which approval was given and we also note that on the very same day assessment order was passed. Above observation clearly shows that there was no time for the ACIT to make any enquiries, investigation, discussion or consideration of entire material placed before him for approval. Thus, in our considered opinion approval has been granted a mechanical manner without application of mind just to fulfill the gap in the proceeding and to formerly comply with the provisions of Section 153D of the Act. As we have above noted that the ACIT has shows inability to make any enquiry, investigation, discussion or consideration of material placed before him on 31.03.2014 and approval has been granted on the very same day in a mechanical manner. Considering the entirety and factual position and circumstances noted in the approval letter, we are compelled to hold that the approval granted by the ACIT is devoid of any application of mind and the same has been given in a mechanical manner without considering the material on record. Thus, in our humble opinion, the powers vested with the ACIT to grant or not to grant approval also require application of mind to the relevant record on which assessment order has been framed and he is also required to apply his mind to the proposals put up before him for approval in the light of material & record, gathered and relied upon by the Assessing Officer. The said power cannot be exercised in a mechanical manner casually without application of mind in a routine manner.

14. In the present case ACIT has granted impugned approval half heartedly without application of mind and without considering and



perusing the material on record. Thus, we are inclined to hold that there has been no application of mind by the ACIT before granting the approval. Consequently, we hold that the assessment orders made u/s 143(3) of the Act r.w.s. 153A of the Act in the case of M/s Siddhbhumi Alloys Ltd. for Assessment Year 2006-07 is bad in law and deserve to be annulled, thus, we ordered accordingly. Finally additional ground of appeal raised by the assessee by way of Rule 27 of the ITAT Rules in ITA No. 321/Lkw/2016 for the Assessment Year 2006-07 is allowed.

15. Since, at the very beginning of the hearing, the Ld. counsel of the assessee as well as Ld. CIT DR placed their concurrence to the fact that the additional ground raised by the assessee in all three appeals of the Revenue and grounds of the assessee in other two appeals i.e. 167 & 168/Lkw/2016 for Assessment Years 2011-12 & 2006-07 respectively, are identical and the same are raising the similar legal issue as facts and circumstances of all five cases are quite similar and identical. Therefore, we hold that our conclusion drawn in ITA No. 321/Lkw/2016 (Supra) would apply *mutatis mutandis* to other four appeals and consequently assessment orders passed therein u/s 143(3) r.w.s. 153A of the Act are also held bad in law and thus we same are also annulled. Hence the same are quashed. Accordingly additional grounds of the assessee in ITA No. 322/Lkw/2016 and ITA No. 192/Lkw/2016 and ground of the assessee other two appeals i.e. 167 & 168/Lkw/2016 are allowed.

16. In the result, all three appeals of the Revenue are dismissed by allowing additional ground of the assessee raised under Rule 27 of the ITAT Rules and other two appeals of the assessee are allowed on legal ground no. 2.





17. Before we part with the order, it is pertinent to note that even though the Revenue has raised several grounds on merit in the three appeals and the assessee has also raised grounds on merit in their respective two appeals but since we have annulled assessment orders relevant to all five appeals passed u/s 143(3) of the Act, therefore, grounds of Revenue as well as of the assessee on merit become academic and infructuous and we are not adjudicating upon them as having become infructuous.

18. In the result, all three appeals of the Revenue are dismissed and both the appeals of the assessee are allowed.

(Order was pronounced in the open court on the date mentioned on the caption page)

*Sd/-*  
**(P.K. BANSAL)**  
Vice President

*Sd/-*  
**(C.M. GARG)**  
Judicial Member

Dated: 28/04/2017  
Aks

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Asstt. Registrar

*Certified True Copy*

*C.L. SINGH*  
26/5/17  
C.L. SINGH  
DAO/HOO