

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH, CUTTACK

श्री चन्द्र मोहन गर्ग, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI CHANDRA MOHAN GARG, JM & SHRI ARUN KHODPIA, AM
आयकर अपील (तलाशियां और अभिग्रहण) सं./IT(SS)A No.51 to 53/CTK/2019
(निर्धारण वर्ष / Assessment Year :2011-2012, 2013-2014 & 2014-2015)

Ritanjali Khatai, L-29, Baramunda Housing Board Colony, Baramunda, Bhubaneswar-751003	Vs	ACIT, Central Circle-1, Bhubaneswar
PAN No. : ABCPK 7526 Q		

AND

आयकर अपील (तलाशियां और अभिग्रहण) सं./IT(SS)A No.54 to 56/CTK/2019
(निर्धारण वर्ष / Assessment Year :2011-2012, 2013-2014 & 2014-2015)

Dillip Kumar Khatai, L-29, Baramunda Housing Board Colony, Baramunda, Bhubaneswar-751003	Vs	ACIT, Central Circle-1, Bhubaneswar
PAN No. : ABCPK 7525 P		

AND

आयकर अपील सं./Income Tax Appeal No.228/CTK/2019
(निर्धारण वर्ष / Assessment Year :2011-2012)

Dillip Kumar Khatai, L-29, Baramunda Housing Board Colony, Baramunda, Bhubaneswar-751003	Vs	ACIT, Central Circle-1, Bhubaneswar
PAN No. : ABCPK 7525 P		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri S.K.Agrawalla/S.K.Hota, ARs.
राजस्व की ओर से /Revenue by	:	Shri Manoj Kumar Goutam, CIT-DR

सुनवाई की तारीख / Date of Hearing	:	28/03/2022
घोषणा की तारीख/Date of Pronouncement	:	08/04/2022

आदेश / ORDER

Per Arun Khodpia, AM :

Out of the seven appeals, six appeals are directed by two different assesses i.e wife and husband against the order passed by the Id. CIT(A)-2, Bhubaneswar, dated 90.04.2019 & 15.04.2019, for the

assessment years 2011-2012, 2012-2013, 2013-2014 & 2014-2015, respectively. The assessee-Dillip Kumar Khatai has also filed an appeal in ITA No.228/CTK/2019, against the order of CIT(A)-2, Bhubaneswar, dated 15.04.2019 for A.Y.2016-2017.

2. Since, the facts and circumstances are same in all the above three appeals of the assessee including the cross objection filed by the assessee, therefore, for the sake of convenience, the above cases were heard altogether and disposed off by this consolidated order. First we shall take up the appeal filed in IT(SS)A No.51/CTK/2019 for A.Y.2011-2012 in the case of Ritanjali Khatai and the facts and grounds mentioned therein shall be taken into consideration for deciding all the appeals.

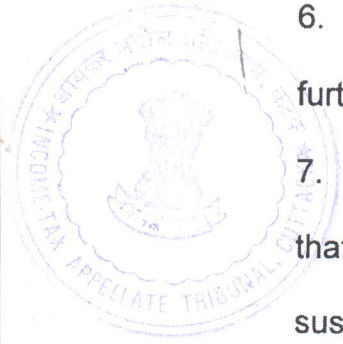
3. The assessee-Ritanjali Khatai in IT(SS)A No.51/CTK/2019 for A.Y.2011-2012 has raised the following grounds :-

1. *That, the Assessment Order passed under the section 153A r.w.s.143(3) is not sustainable in view of the fact that no incrementing materials were found during the course of search and therefore the Ld. Assessing Officer is not permitted to disturb of the completed assessments or unabated assessment and the Ld. Commissioner of Income Tax (Appeals) committed an error of law in endorsing the action of the Ld. Assessing Officer.*
2. *That the assessment order passed u/s 153A r/w section 143(3) is not sustainable in view of the fact that the proper procedure of law has not been followed by the Ld. Authorities below while granting the approval u/s 153D Act. Therefore the assessment order is liable to be quashed.*
3. *That, the Ld. Commissioner of Income Tax (Appeals) committed an error of law in confirming the additions of Rs.23,12,146 which is the Long Term Capital Gain earned from sale of listed securities and exempted u/s 10(38) of the Act, therefore the additions of Rs.23,12,146 is liable to be deleted.*
4. *That, the Ld. Assessing Officer is legally not correct in imposing the interest u/s 234A, 234B & 234C and the Ld. Commissioner*

of Income Tax (Appeals) is wrong in dismissing this ground of appeal.

5. *That, the appellant craves to alter, amend, modify or add any other ground that may be considered necessary in the course of appeal proceeding.*
4. Facts in brief arising out of the assessment order are that a search and seizure action u/s.132 of the Act was conducted against the assessee on 25/08/2015. In consequence to search, the cases of the assessee for A.Ys.2010-11 to 2015-16 were taken up for assessment u/s.153A of the Act and A.Y.2016-2017 was taken up for assessment u/s.143(3) of the Act. Thereafter the AO issued notice u/s.153A of the Act and response to the same, the assessee filed return of income on 13.10.2016 disclosing taxable income of Rs.10,27,520/-, which was taken up for scrutiny and notices u/s.143(2) & 142(1) of the Act along with detailed questionnaire. In response to the same, the assessee furnished all the details and other documents. The AO noted that the issues arising out of discrepancies noted from various documents and books of accounts seized during the course of search and statements of several related persons, their implications, notice issued to assessee, however, on failure to respond the same on the part of the assessee, the AO proceeded to frame assessment u/s.153A r.w.s.143(3) of the Act making addition of Rs.23,12,146/- assessing the total income of the assessee at Rs.33,39,666/- for the A.Y.2011-2012 and passed order after obtaining prior approval from the JCIT, Central Range, Bhubaneswar u/s.153D of the Act, vide dated 23.11.2017.

5. Against the above order of AO, the assessee preferred appeal before the CIT(A) and the CIT(A) dismissed the appeal of the assessee on the issue raised in the additional ground as well as on merits.
6. Dissatisfied with the above order of CIT(A), the assessee is in further appeal before the Tribunal.
7. Ld. AR before, firstly, argued on the issue raised in the ground No.2 that the assessment order passed u/s.153A r.w.s.143(3) of the Act is not sustainable as there was no approval u/s.153D of the Act. In this regard, Id. AR filed his paper book consisting of 201 pages and submitted that the approval given by the Joint Commissioner of Income Tax (JCIT) is mechanical in nature and, therefore, the assessment order passed by the assessing officer is invalid. It was submitted by the Id. AR of the assessee that while granting approval u/s.153D of the Act by the JCIT, proper procedure has not been followed and no incriminating material was found for the assessment year under consideration. Ld. AR of the assessee referring to the provisions of Section 153D of the Act, submitted that provisions of section 153D implies that the meaning of approval is not simple approval or approval of the order in the mechanical manner. While granting approval u/s.153D of the Act, almost same principle and procedure has to be adopted and followed as required for grant of approval u/s.151 of the Act. The Joint Commissioner must have to go through the seized documents, notices issued by the AO, submissions made by the assessee and also documents submitted by the assessee and then he had to apply his judicious mind to all the relevant records and



thereafter he should proceed to grant approval to the AO to pass orders accordingly. He vehemently submitted that in the case of the assessee, the Id Jt. CIT has granted approval to pass the orders mechanical manner. In the said approval letter dated 23.11.2017, as submitted before us by the Id. AR of the assessee, it can be discernible that JCIT has simply mentioned that *"approval is hereby accorded as per the provisions of section 153D of the I.T. Act for passing the assessment orders in respect to the following cases"*. Therefore, Id. AR submitted that this issue has already been settled by the Tribunal in the case of Dillip Constructions Pvt. Ltd. in IT(SS)A Nos.66 to 71/CTK/2018, order dated 29.11.2019 along with other connected appeals, wherein the Tribunal has held that the approval had been granted in a mechanical manner without application of mind and, thus, no valid approval has been granted by the Id JCIT before authorising the AO to pass assessment orders u/s.153A of the Act. Accordingly, the Tribunal set aside the impugned orders of lower authorities and quash the assessment orders. The facts in the present case are similar to the above case decided by the Tribunal, therefore, the similar issue involved in the present case shall be decided in the manner as has been held by the Tribunal in the case of Dillip Constructions Pvt. Ltd. (supra) and appeal of the assessee may kindly be allowed.

8. On the other hand, Id. CIT-DR has filed his written submissions and drew our attention to the submissions made on the ground No.2 running from page 13 to 18, which read as under :-

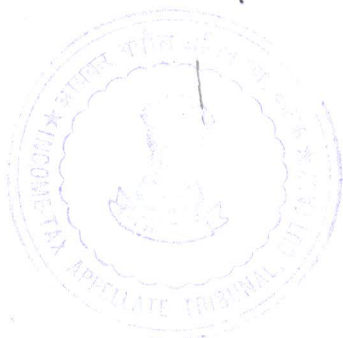
It has been argued that approval u/s. 153D has been granted by the Supervisory Officer (JCIT, Central Range, Bhubaneswar) on 23.11.2017 without following proper procedure of law.

a) It is clear from the plain language of section 153D that the AO is only required to take prior approval of Supervisory officer (JCIT) before passing of assessment order U/s 153A r.w.s. 143(3) of the Act. This requirement has been fulfilled in the present case.

It is a cardinal principle that the words of a Statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning unless such construction leads to some absurdity or unless there is something in the context or in the object of the Statute to the contrary. The golden rule is that the words of a Statute must prima facie be given their ordinary meaning. When the words of a Statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning irrespective of the consequences. It is said that the words themselves best declare the intention of the law giver (Hon'ble Supreme Court in the case of Union of India v. Tata Chemicals Ltd. (363 ITR 658) (para-22).

b) The approval granted under section 153D of the Act by the Supervisory officer (Jt. CIT) is merely an Administrative order and no civil or penalty consequences flow from such an order against the assessee. The approval of Supervisory officer is totally distinct from the assessment order and not required to be communicated. Hence it is not open for challenge before the Court of Law. Once the reasons for Administrative Approval are not required to be communicated to the assessee then it is not permissible in law to permit the assessee to agitate the reasons for passing the Administrative Approval. The Approval granted by the Supervisory officer (Jt. CIT) is not justiciable law. It is submitted that the subject matter of the proceeding before the Honourable Tribunal is the assessment order for which the existence of approval is necessary (which has been duly obtained in the present case) and therefore the approval cannot form basis of challenging the assessment order.

c) The power to determine the income vests in the Assessing Officer exercising the quasi-judicial function and it is in violation of principle of quasi-judicial function that can render the assessment order invalid. The act of Administrative Approval by Supervisory officer does not take away the quasi-judicial powers which still vests in AO and therefore Administrative Act cannot invalidate the assessment order. Charging sections fix the liability to tax and any violation of machinery section will not render the assessment order void. The Administrative order and judicial orders are separate. The subject matter of the challenge in the present appeal is assessment order for which the approval has been granted therefore the approval itself cannot be the subject matter of adjudication. It is further submitted that the recording of sanction or approval is not



required to be made in a particular manner. What could be challenged before the Tribunal is want of sanction and for that the reliance is placed on the decision of the Mumbai Tribunal in the matter of *Pratibha Pipes & Structural Ltd. vs DCIT* in ITA No.3874/Mum/2015 for the proposition that the Approval under section 153D of the Act is an Administrative procedure which requires to be complied with by the officers who are discharging the assessment functions (para-16 to 18 on pages 16 to 20 of the appellate order).

d) The Judgement of the Hon'ble Mumbai Tribunal in the case of *Smt. Shreelekha Damani* (88 taxmann.com 383) is distinguishable on facts and circumstances. In para-10 of the decision (on page-3), it has been mentioned that the Addl. CIT, Central Range-7 had asked the AO to submit the draft orders for approval u/s. 153D on or before 24.12.2010. However the draft order was submitted on 31.12.2010 thereby he was left with no time to analyze the various issues of draft order. With these comments, the draft order was approved as it was submitted by the A.O. Therefore in said context, it was held by the Hon'ble Mumbai ITAT that the Addl. CIT had not applied ill's mind while. granting approval u/s 153D. However in the present case, no such comments have been mentioned by the JCIT, Central Range-, Bhubaneswar while according approval. There is absence of any dissenting note in the approval granted u/s.153D of the Act. It must be noted with due caution that he had enough time of 6 days to go through the seized documents, appraisal report, enquiries made by the A.O. and draft assessment orders. In the present case, the Supervisory Officer (JCIT, Central Range, Bhubaneswar) has duly applied his mind; he has gone through the records; he has analyzed the statements made during the search as well as the seized documents etc. In this regard, kindly refer to para-6.2 on page-7 of the appellate order passed by the CIT(Appeals)-2, Bhubaneswar dated 15.04.2019 for A.Y. 2011-12 which is reproduced as under:

"6.2 I have carefully examined the assessment order and the submissions of the appellant. It is seen that the A.D. who is based in Bhubaneswar has sent draft assessment orders to the JCIT vide his letter dated 17.11.2017 along with the assessment records. The JCIT accorded his approval u/s.153D of the Income Tax Act by letter dated 23.11.2017. The fact of according approval is clearly mentioned in the letter of JCIT. It is important to note here that the JCIT and the A.O. continuously and regularly interact with each other during the course of search assessment proceedings. They discuss seized material, appraisal report, enquiries to be made, findings of the enquiries and submissions of the assessee. According approval u/s.153D is the last statutory step. The decisions relied upon by the appellant are on totally different facts".

e) The decision of Hon'ble Delhi ITAT in the case of *M3M India Holding vs. DCIT* in ITA No.2691fDel/2018 dated 15.03.2019 was also rendered on different facts. In said case, the last hearing took



place on 29.01.2014 and submissions of around 500 pages were made by the A.R. of the assessee. The A.D. was based at Faridabad and he seems to have prepared draft assessment orders on 30.01.2014. The supervisory officer (Addl. CIT) was based at Chandigarh. In reply to RTI application, it was found that no record of mode of dispatch of assessment records to Chandigarh was available with the A.O. There was also no record as to how the draft assessment order and assessment records had been received by the Addl. CIT at Chandigarh. In these facts and circumstances, it was held. that there was no application of mind by the supervisory officer, which is not the case here.

f) The Judgement of the Hon'ble Cuttack Tribunal in the case of Smt, Geetarani Panda vs. ACIT (IT(SS)A No.01/CTK/2017 dated 05.07.2018 is distinguishable on facts. In para-11 of the decision (on page-13), it has been mentioned that the Addl. CIT, Central Range-I had given a reminder to the AO to submit the draft orders for approval u/s. 153D on or before 23.03.2015. However the draft order was submitted on 26.03.2015 thereby he was left with no time to ensure that all the points in the Appraisal Report, the appellate proceedings, audit inspection etc. have been duly taken into account and the enquiries/investigations required to be made, were actually made by the AO. In the end, he has also mentioned that these cases were never discussed with him. With these comments, the draft order was approved as required under the statute u/s 153D. Therefore in said context, it was held by the Hon'ble Cuttack ITAT that the Addl. CIT had not applied his mind while granting mechanical approval u/s 153D (para-25 on page-24). However in the present case, no such comments have been mentioned by the JCIT, Central Range, Bhuvaneshwar while according approval. There is absence of any dissenting note in the approval granted u/s.153D of the Act.

g) The decision of Hon'ble Pune ITAT in the case of Akil Gulamali Somji (20 taxmann.com 380) has been rendered on different facts and circumstances. In the case of Akil Gulamali Somji, the AO while framing the assessment u/s.153C had failed to obtain the necessary approval u/s. 153D (Para-3 on page-7). However in the present case, the JCIT, Central Range, Bhuvaneshwar has accorded approval vide his letter dated 23.11.2017.

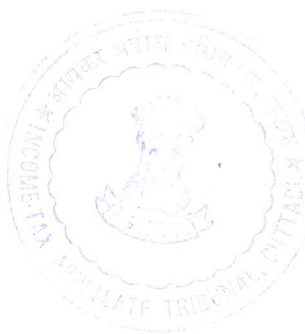
h) In the case of Kailash Moudgil vs. DCIT (72 ITD 97), "it was held by the Hon'ble Delhi IT AT in para- 31 on page- 24 that provisions of section 158BC do not require the Commissioner to record his reasons in writing while approving the order of the Assessing Officer under section 158BG proviso and for that reason, the assessment order passed under section 158BC does not suffer from any infirmity. It was further held that the approval of the Commissioner without recording any reasons in writing for approving the order would not render the order of the Assessing Officer void ab-initio and would not invalidate the assessment order. Assuming without admitting that some infirmity is there, it is curable

under law, since the order of assessment passed under section 158BC is made appealable under section 253(l)(b) of the Income Tax Act in which the assessee is entitled to canvass all the points available to invalidate any part of the assessment and thus the defect, if any, existing previously would be completely cured.

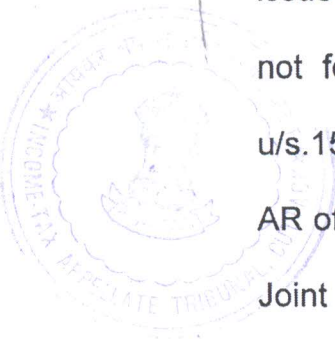
i) With due respect, the decision of Hon'ble Cuttack IT AT in the case of Dilip Construction Pvt. Ltd. (ITA No.66 to 71/CTK/2018 and ITA No.292/CTK/2018) wherein the reliance has been placed on abovementioned decisions varying in facts & circumstances, does not lay down the correct position of law. In all these judgements, the supervisory officer had given a dissenting note while according approval u/s.153D, which is not there in the present case.

In the case of CIT vs. Hi-Tech Arai Limited (321 ITR 477), the Hon'ble Madras High Court held that there is no merit in argument that the Tribunal should blindly follow its own earlier decision even if such earlier decision did not reflect the correct position of the law. Thus where the Tribunal by the impugned order had applied section 32(l)(iia) to the facts involved in the case of the assessee and had found that the assessee was entitled for the additional depreciation claimed under the said provision, it could not be held that simply because a co-ordinate Bench of the Tribunal had earlier taken a different view, the Tribunal on this occasion also ought to have followed the same, especially when it was found that the Tribunal had applied the law correctly in the impugned order. It is humbly requested that this legal ground raised by the assessee needs to be rejected and dismissed.

9. Apart from the above, Id. CIT-DR also submitted that that once Jt. CIT has given approval means he has gone through all relevant assessment records, the draft assessment orders and thereafter conveyed his approval u/s. 153D of the Act to the Assessing Officer. Hence, no such irregularities have been committed by the Assessing Officer in framing the assessment. The contention of non-application of mind is not sustainable being baseless in view of the approval letter dated 23.11.2017. Therefore, the Id. CIT-DR submitted that orders passed by the authorities below deserves to be affirmed dismissing the appeal of the assessee.



10. Having heard to the submissions made by the parties and perused the relevant documents placed on the record as well as the orders of the authorities below and with the consent of parties, proceeded to decide the issue raised by the assessee in ground No.2 regarding procedure of law not followed by the AO while passing the assessment order framed u/s.153A/143(3) of the Act. During the course of hearing, at the outset, Id. AR of the assessee drew our attention to the approval letter issued by the Joint Commissioner of Income Tax (Central), Bhubaneswar according approval u/s.153D of the Act for passing the assessment orders in respect of the assessee and other group concern. On perusal of the same, we found that the approving authority has not applied his mind to the assessment records and draft assessment orders proposed to be passed by the Assessing officer as per mandate of section 153D of the Act, which is clearly discernible from the approval order dated 23.11.2017. As per mandate of section 153D of the Act, 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 153A of the Act without prior approval of the Id JCIT. This issue has already been settled by the coordinate bench of the Tribunal in the case of Dillip Construction Pvt. Ltd. (supra), wherein the Tribunal has inclined to hold that the Id JCIT has granted approval under section 153D of the Act in a mechanical manner without application of mind to the relevant assessment records and draft assessment orders submitted before him by the AO for grant of approval



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 ITA No.228/CTK/2019

u/s.153D of the Act before passing the relevant assessment orders u/s.153A r.w.s 143(3) of the Act. Accordingly, the Tribunal dismissed the appellate order and cancelled the assessment order passed u/s.153A/143(3) of the Act on this issue. Ld. CIT-DR vehemently submitted that the facts and circumstances in the case of Dillip Construction Pvt. Ltd. are different to the present case of the assessee, therefore, the decision rendered in Dillip Construction Pvt. Ltd. cannot be relied upon to the present case in hand. In order to verify the contention of Ld. CIT-DR in the light of the facts in both the cases, the approval given in the case of Dillip Construction Pvt. Ltd. is reproduced as under :-

" OFFICE OF THE JOINT COMMISSIONER OF INCOME TAX (CENTRAL),
 AAYAKAR BHAWAN ANNEXE, 4THFLOOR, RAJASWA VMAR, BHUBANESWAR-
 751007

F.No .JCIT(Central) /BBSR/153D CC-1 BBSR/2017-18/ 3138 Date: 23.11.2017

To

The Assistant Commissioner of Income Tax,
 Central Circle-1, Bhubaneswar

Sub: Approval of the Assessment orders u/s 153D of the LT. Act, 1961 in respect to the cases of M/s Dillip Construction P Ltd- Reg

Ref: Your letter no. ACIT/CC-1/BBSR/Report/2017-18/7 dated 17.11.2017 seeking approval of draft assessment orders u/s 153D

Approval is hereby accorded as per the provisions of section 15 3D of the I.T.Act for passing the assessment orders in respect to the following cases.

Sl. No	Name of the assessee	PAN	AY.,	Total Assessed Income (Rs.)	Section under which order passed.
1	M/s Dillip Construction PLtd	AABCD1417E	2010-11	18,25,68,000/-	u/s153A/143(3)
2			2011-12	14,96,41,388/-	u/s 153A/143(3)
3			2012-13	8,21,92,330/-	u/s 153A/143(3)
4			2013-14	10,07,78,950/-	u/s 153A/143(3)
5			2014-15	9,53,00,070/-	u/s 153A/143(3)
6			2015-16	16,51,32,390/-	u/s 153A/143(3)
7			2016-17	14,72,53,800/-	u/s 143(3)

Sd/-

(Joint Commissioner of Income Tax (Central),
 Bhubaneswar

And, the approval given in the case of the present assessee, which read as under :-

" OFFICE OF THE JOINT COMMISSIONER OF INCOME TAX (CENTRAL),
AAYAKAR BHAWAN ANNEXE. 4THFLOOR. RAJASWA VMAR,
BHUBANESWAR-751007

F.No .JCIT(Central) /BBSR/153D CC-1 BBSR/2017-18/ 3138 Date: 23.11.2017

To

The Assistant Commissioner of Income Tax,
Central Circle-1, Bhubaneswar

Sub: Approval of the Assessment orders u/s 153D of the LT. Act, 1961 in respect to the cases of M/s Dillip Construction P Ltd- Reg

Ref: Your letter no. ACIT/CC-1/BBSR/Report/2017-18/10 dated 17.11.2017 seeking approval of draft assessment orders u/s 153D

Approval is hereby accorded as per the provisions of section 15 3D of the I.T.Act for passing the assessment orders in respect to the following cases.

SI. No	Name of the assessee	PAN	AY.	Total Assessed Income (Rs.)	Section under which order passed.
1	Ritanjali Khatai	ABCPK7526Q	2010-11	18,52,300/-	u/s153A/143(3)
2			2011-12	33,39,666/-	u/s 153A/143(3)
3			2012-13	12,33,460/-	u/s 153A/143(3)
4			2013-14	36,06,443/-	u/s 153A/143(3)
5			2014-15	1,52,85,715/-	u/s 153A/143(3)
6			2015-16	29,63,760/-	u/s 153A/143(3)
7			2016-17	28,05,680/-	u/s 143(3)

Sd/-

Joint Commissioner of Income Tax (Central),
Bhubaneswar

11. On perusal of the above two approvals given in the case of two different assesseees, we found that both the approvals are similar to each other. In both the approval letter, the JCIT has simply mentioned that approval is hereby accorded as per provisions of Section 153D of the Act for passing the assessment order, therefore, the arguments of the Id. CIT-


DR that facts and circumstances along with the approval given in Dilip Construction Pvt. Ltd. and in the case of Ritanjali Khatai are different, cannot be accepted. Accordingly, we are in complete agreement with the contention of Id. AR of the assessee that the issue is covered by the decision of coordinate bench of the Tribunal in the case of Dillip Construction Pvt. Ltd.(supra), wherein the relevant observations of the Tribunal are as under :-

31. Before we proceed, we find it appropriate to consider the contention of Id CIT DR wherein, he submitted that as per letter dated 19.12.2018, the JCIT, the approving authority had given approval for passing order u/s.153A r.w.s 143(3) in both the cases after satisfying himself with the draft assessment orders. This letter has been written to the JCIT (Central) by approving authority i.e. JCIT (BPU) pertaining to the office communication regarding additional ground of appeal, which are being adjudicated but in view of approval order dated 23.11.2017, thus we are inclined to accept the contention of Id A.R. that this submission of approving authority is mere an attempt to fill the gaps and procedural lacunas occurred in the procedure adopted by JCIT while granting approval under section 153D of the Act and, therefore, the contention of Id A.R. in this regard hold the field.

32. Similarly letter dated 4.1.2019 issued by JCIT (Central), Bhubaneswar to the CIT (Audit & ITAT), Bhubaneswar is merely a covering letter supplying copy of the approval dated 23.11.2017, which cannot be treated as an explanation to the approval dated 23.11.2019 curbing the mistake in the procedure adopted by the JCIT while granting approval u/s.153D of the Act. On these subsequent letters/correspondences, we are of the considered view that for adjudicating legal ground of assessee's challenging the validity of approval u/s.153D of the Act dated 23.11.2017, we have to evaluate said approval apparently by considering the totality of facts and circumstances and the manner in which such approval has been granted. This cannot be improvised by way of subsequent exercise or correspondence between the approving authority and the AO or other officers.

33. In view of foregoing discussion, we are inclined to hold that the Id JCIT has granted approval under section 153D of the Act in a mechanical manner without application of mind to the relevant assessment records and draft assessment orders submitted before him by the AO for grant of approval u/s. 153D of the Act before passing the relevant assessment orders u/s.153A r.w.s 143(3) of the Act.





34. Considering the facts and circumstances of the case in the light of above discussion, it is amply clear that the AO vide latter dated 17.11.2017 requested the Approving Authority i.e. JCIT to grant approval u/s 153D of the Act and furnished relevant assessment records and draft assessment order before him for consideration prior to grant of approval. As we have already noted above that there is no requirement of mandate of section 153D of the Act that an opportunity of hearing should be allowed to the assessee before grant of approval u/s.153D of the Act but at the same time, it is also a requirement of mandate of section 153D of the Act that the approving authority must apply his mind to the relevant assessment records and draft assessment order before granting approval u/s.153D of the Act. As the requirement of grant of approval by the Superior authority is not merely a formality but it is a mandate and requirement of provisions of the Act.

35. In our considered and humble opinion, no procedure for grant of approval has been provided u/s.153D of the Act and the Income tax Rules, 1962. However, when legislature has enacted some provision to be exercised by a higher revenue authority enabling the AO to pass assessment or reassessment orders in the search cases, then, it is the duty of the approving authority to exercise such power by applying his judicious, vigilant and cautious efforts. We are of the view that the obligation on the approval granting authority is of two folds, one the one hand, he has to apply his mind to secure inbuilt for the department against any omission or negligence by the AO in taxing right income in the hands of right person in the right assessment year and on the other hand he is also responsible and duty bound to do justice with the taxpayer/assessee by granting protection against arbitrary or unjust or unsustainable exercise and decision by the AO crating baseless tax liability on the assessee and thus he has to discharge his duties as superior authority. Thus, granting approval u/s.153D of the Act is not merely an official formality but it is a supervisory act which requires proper application of administrative and judicial skill by the authority on the application of mind and this exercise should be discernible from the order of approval u/s.153D of the Act.

36. In our humble understanding the provisions of section 153D of the Act has been introduced by the legislature in its cautious wisdom to make it mandatory on the supervisory authority/approving authority to discharge the duty towards both the assessee as well as revenue to follow the proper procedure and to apply his mind on the material, relevant evidences and other documents including materials found during search & post search investigations and explanation & supporting documents of the assessee to the issue show caused to him by the AO, on the basis of which the AO wants to pass or frame assessment or reassessment orders and after such exercise by perusing and going through the relevant assessment folders/files alongwith proposed draft orders and also by applying his mind has granted approval u/s.153D of the Act. This is the minimum required exercise by the approving authority before granting approval u/s.153D of the Act. The approving authority has undertaken any such exercise should be discernible from the order of the approval and the


subsequent internal correspondence between the lower authorities have no relevance and the defects or omissions or non-application of mind cannot be cured or rectified by any other exercise or working undertaken by the approving authority after grant of approval and after passing the assessment orders u/s.153A of the Act by the Assessing officer.

37. The provisions of section 153D of the Act was inserted by the Finance Act, 2007 w.e.f. 1.6.2007. In our humble understanding of said provision, the legislative intent for insertion of said provision is clear inasmuch as prior to insertion of provision u/s.153D, there was no provision for taking approval in cases of assessment or reassessment where search and seizure operation was conducted u/s.133A of the Act. Therefore, in our considered view, the legislature wanted the assessment/reassessment of search and seizure cases should be made and orders should be passed with the prior approval of superior authority, which also means that the superior authority should apply his mind on the materials on the basis of which the AO is making or passing assessment orders and after due application of mind to material in the hands of department while initiating search proceedings, material found & seized during the course of search and also material or information unearthed or gathered during post search investigation and enquiry alongwith explanation, documentary evidence and other relevant material or information submitted by the assessee during search and assessment proceedings, the superior authority has to grant the approval u/s.153D of the Act for passing assessment/reassessment orders in the search cases.

38. Further, in our considered view, the approval u/s.153D of the Act cannot be treated as an official formality but the provision has been inserted by the legislature with some specific and useful purpose. It is apparent that the purpose behind enactment of the said provision in the Statute by the legislature are of two folds viz (i) before approval, the Sr. Authority will ensure that the assessee should be protected against undue or irrelevant addition & disallowances in the assessment and (ii) the approving granting authority will also ensure that proper enquiry investigations are carried out by the Assessing Officer on all the relevant materials including material in hands of the department at the time of initiating search proceedings, material or documents found and seized during search operation and materials found and unearthed during post search investigations and enquiries. Therefore, said provision provides and requires application of mind by the approving authority of the department which, in turn, provides safeguard to the both the parties i.e. revenue and the assessee. Therefore, the provisions of section 153D of the Act cannot be treated as a mere formality and mandate therein required to be followed by the approving authority in a judicious manner by due application of mind in a manner of cautious judicious or quasi judicial authority. This view has also been expressed by Pune Bench of the ITAT in the case of Akil Gulamali somji, in ITA Nos.455 to 458(Pune) of 2010 vide order dated 30.3.2012, wherein, it was held that when the approval was granted without proper application of mind, the order of assessment will be bad in law. We also take respectful cognizance of the fact that



the Hon'ble Bombay High Court in the case of Akil Gulamali Somji (supra) has concurred with the said findings and view taken by the Pune Tribunal that not following the provisions of section 153D of the Act will render the related order of assessment void.



39. In view of foregoing discussion, we reach to a logical conclusion that it is the duty of the approving authority to act in accordance with the mandate and provisions of law while granting approval and discharging statutory function lay on his shoulders by following proper procedure and also by applying his judicious and cautious mind to the relevant assessment folders/files and draft assessment orders while granting approval u/s.153D of the Act. This is not a formality but a statutory duty of the approving authority with a corresponding obligation on him to examine relevant record and assessment orders and thereafter grant the approval. We are cautious about that the reasons for granting approval may not be a subject matter of challenge or are not required to be mentioned in the order of approval but the manner and the material on the basis of which approval has been granted can be challenged by the assessee and following proper procedure and application of mind by the approving authority should be discernible from the order of approval. No other evidence or documents is required to be considered or appreciated as the approval should be self-speaking that it has been granted by the Id JCIT by following due procedure and due application of mind to the relevant records and orders. The scope and issue agitated by the assessee by way of legal ground in the present case is not that of grant of hearing or representation to the assessee at the time of granting approval but the main grievance and legal objection of the assessee is that the approving authority has granted approval without application of mind and without looking into the seized materials and investigation report and draft assessment/reassessment orders and this fact should be clearly discernible from the approval order and no other extraneous material/document can be seen in this regard.

40. In view of above, we are inclined to hold 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 of approval u/s.153D and mandate of enactment by the legislature will be defeated. In the present case, the approving authority, the Id JCIT got five days time but from the order of approval, we are unable to see any exercise by the approving authority and even in the approval orders (supra), he has not mentioned that the relevant appeal folders/files alongwith assessments/reassessment orders have been perused or any discussion or consultation has been made with the AO prior to granting of approval u/s.153D of the Act. Accordingly, we are compelled to hold that the approval granted by the Id JCIT in the appeals under consideration has been granted in a mechanical manner without application of mind and that the assessments/reassessment orders passed by the AO on such approval are declared to be void and bad in law. We hold so.

41. In view of aforesaid discussion, we clearly find that approving authority has not applied his mind to the relevant assessment records and draft assessment orders prior to granting approval to the Assessing officer for passing assessment orders u/s.153A/143(3) of the Act. Therefore, the contention of Id A.R. of the assessee is justified and sustainable that the approval was granted in most mechanical manner without application of mind and respectfully following the proposition rendered by Hon'ble Bombay High Court in the case of Smt. Shreelakha Damani (supra), the order of ITAT Delhi Bench in the case of M3M India Holdings (supra) and decision of ITAT Cuttack Bench in the case of Geetarani Panda (supra), we hold that no valid approval has been sanctioned or accorded by the Id JCIT before allowing the AO to pass the relevant assessment orders. From the relevant approval orders dated 23.11.2017, it is vivid that Id JCIT has not mentioned in the approval orders that he has gone through the relevant assessment records/files/folders and draft assessment orders for granting approval. These facts clearly show that the approval had been granted in a mechanical manner without application of mind and, thus, no valid approval has been granted by the Id JCIT before authorising the AO to pass assessment orders u/s.153A of the Act. Accordingly, all assessment orders are vitiated and thus same are void being bad in law. The requirement of mandate of section 153D of the Act has not been satisfied in both the cases and accordingly we hold that the all assessment orders are vitiated and thus same are void being bad in law. We, accordingly set aside the impugned orders of lower authorities and quash the assessment orders by allowing additional ground of the assesseees in all appeals filed by both the assesseees having identical and similar facts and circumstances.

12. Thus, respectfully following the above observations of the Tribunal and especially the fact that the approval u/s.153D of the Act given by the JCIT for passing assessment orders in case of assessee and other group concern is without application of mind as the JCIT has not mentioned in the approval orders that he has gone through the relevant assessment records/files/folders and draft assessment orders for granting approval, therefore, we hold that the impugned order passed by the CIT(A) affirming the assessment order passed by the AO, is not unsustainable. Accordingly, we allow the ground No.2 of the assessee and cancel the assessment order framed u/s.153A/143(3) of the Act.



13. Since we have already cancelled the assessment order framed by the AO in the present case u/s.153A/143(3) of the Act, therefore, all other issues or grounds challenging the merits of the additions or disallowances in respective appeals arising out of impugned assessment proceedings, are rendered to be academic and not being adjudicated upon. Thus, the appeal of the assessee in IT(SS)A No.51/CTK/2019 for A.Y.2011-2012 is allowed.

14. Similar grounds have been taken by the assessee in other appeals i.e. IT(SS)A Nos.52&53/CTK/2019 filed for A.Ys.2013-2014 & 2014-2015, therefore, our observations made in IT(SS)A No.51/CTK/2019 (AY:2011-2012) shall apply *mutatis mutandis to the other appeals of the assessee i.e.IT(SS)A Nos. 52&53/CTK/2019 also. Thus, IT(SS)A Nos.52&53/CTK/2019 are allowed.*

15. Now, we shall take up the appeals in IT(SS)A No.54-56/CTK/2019 for A.Y.2011-2012, 2012-2013 & 2014-2015 and ITA No.228/CTK/2019 for A.Y.2016-2017 in the case of assessee-Dillip Kumar Khatai. In these appeals similar grounds have been taken by the assessee as the grounds decided by us in earlier paras while deciding the appeal of the assessee-Ritanjali Khatai, wherein we have allowed the appeal of the assessee cancelling the appellate order as well as assessment order holding that the assessment order passed by the AO is not sustainable as the approval u/s.153D of the Act given by the JCIT for passing assessment orders in case of assessee and other group concern is without application of mind as the JCIT has not mentioned in the approval orders that he has

gone through the relevant assessment records/files/folders and draft assessment orders for granting approval. Since, the grounds raised in the present appeals being similar and identical to the grounds decided in the case of Ritanjali Khatai in IT(SS)A No.51/CTK/2019 for A.Y.2011-2012, therefore, our observations made in the said appeal shall apply *mutatis mutandis* to these present appeals also.

16. As we have already cancelled the assessment order framed by the AO in the present case u/s.153A/143(3) of the Act, therefore, all other issues or grounds challenging the merits of the additions or disallowances in respective appeals arising out of impugned assessment proceedings, are rendered to be academic and not being adjudicated upon. Thus, IT(SS)A Nos.54-56/CTK/2019 and ITA No.228/CTK/2019 are allowed.

17. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open court on 08/04/2022.

Sd/-
(C.M.GARG)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 08/04/2022

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- Ritanjali Khatai, Dillip Kumar Khatai, Bhubaneswar
2. प्रत्यर्थी / The Respondent- AIT, Central Circle 1, Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A)- 2, Bhubaneswar
4. आयकर आयुक्त / CIT- 2, Bhubaneswar
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack

आयकर अपीलीय अधिकरण

Income Tax Appellate Tribunal

कटक न्यायपीठ, कटक

Cuttack Bench Cuttack