VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

Communiqué

Direct Tax

May 2024

Inside this edition

High Court Rulings

ITAT Rulings

HC Holds Approval under section 153D Not a Mere Ritualistic Formality; Appropriate Application of Mind A Requisite for Validity

Facts

On 18.11.2016, the residential premises of the assessee were subject to a search investigation conducted under section 132 by the Investigation Wing in the case of the Nayyar Group. The same was followed by a survey operation under section 133A. An order under section 127 was passed leading to the centralization of the assessee's case.

A notice was issued under section 153A and the assessment was finalized through order dated 30.12.2018 passed under section 153A read with section 143(3) with respect to AYs 2011-12 to 2015-16.

Aggrieved, the assessee preferred appeals before the Tribunal which were allowed on the ground that the approval granted under section 153D by the appropriate authority was defective and mechanical and hence the entirety of the search proceedings were void and illegal.

Consequently, an appeal was preferred by the revenue before this Hon'ble High Court against the order of the Tribunal for the AY 2015-16.

Ruling

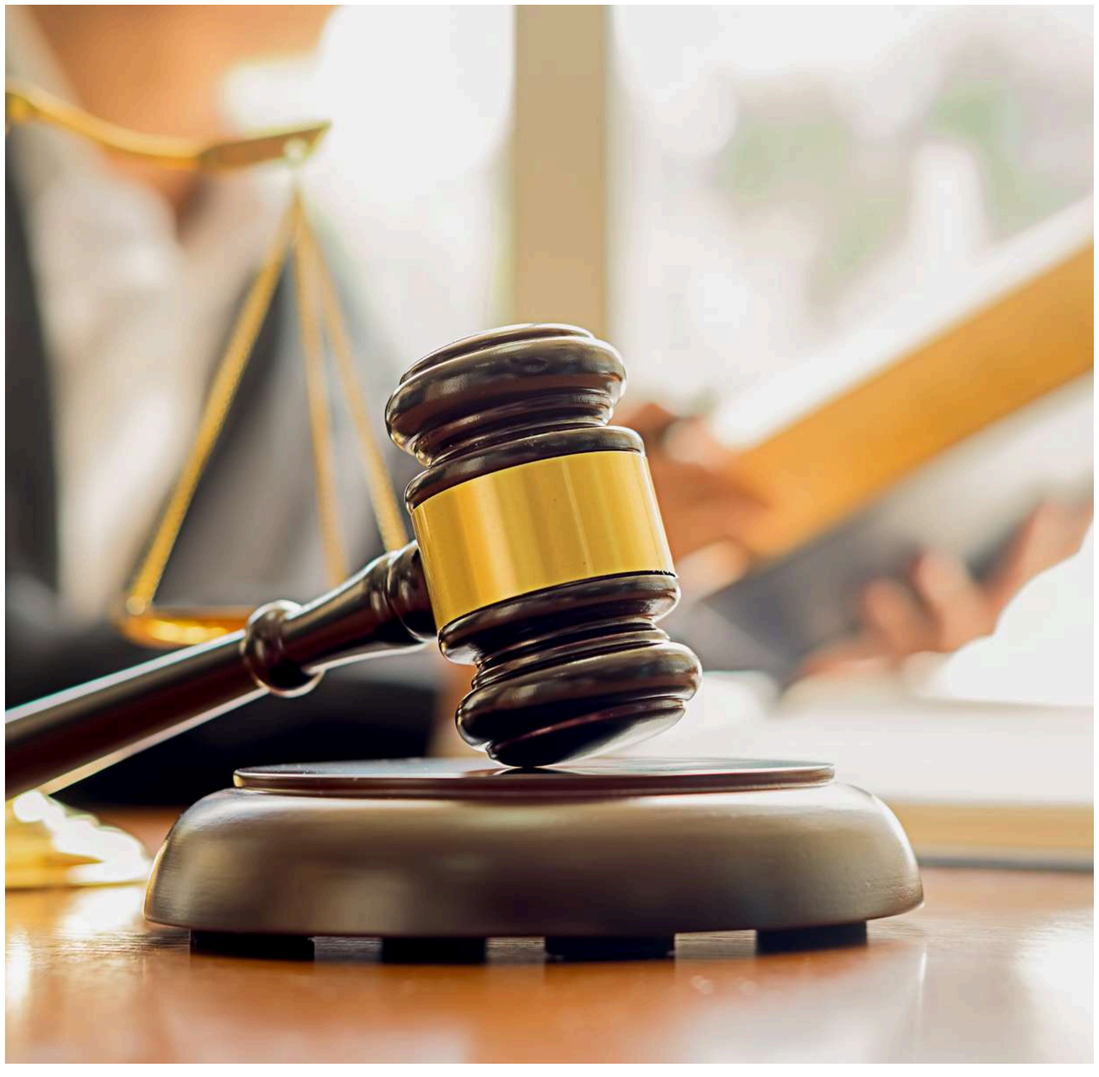
The Hon'ble High Court ruled in favour of the assessee. To reach a conclusion, the Hon'ble court relied on the case of *Asst. CIT. vs. Serajuddin and Co. [2023 SCC OnLine Ori 992]* wherein the Hon'ble Orissa High Court held as follows:

"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 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."

Furthermore, the Hon'ble Court observed that a similar view had been taken by this Court in the case of *PCIT vs. Anuj Bansal ITA 68/2023,* wherein it was held that the powers granted under section 153D cannot be used in a mechanical manner.

Hence, the Hon'ble Court determined that *"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."*

Source: High Court, Delhi in Pr. Commissioner of Income Tax vs. Shiv Kumar Nayyar vide ITA 285/2024 dated May 15, 2024.



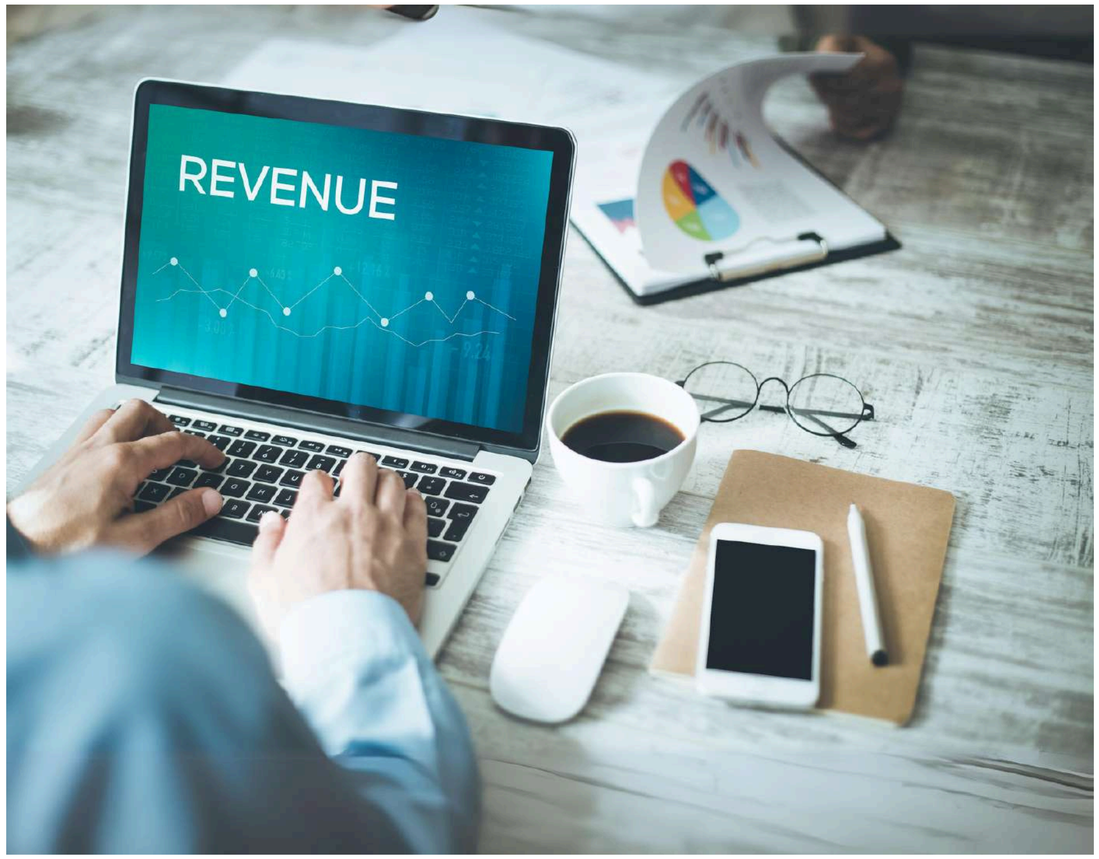
HC Clarifies Panchnama Does Not Authorize Revenue to Conduct Search; Proceedings Initiated under section 153A without Search Void and Without Jurisdiction

Facts

The assessee was a company against whom search and seizure proceedings had been initiated under section 132 in 2011, pursuant to which the assessments for AYs 2006-07 to 2012-13 were framed. Consequently, a notice under section 153A was issued dated 28.12.2012, wherein the assessee was asked to furnish the return of total income including the undisclosed income. The assessment was finalized on 28.04.2014 vide assessment order under section 153A, accepting the returned income of INR 70.15 lakhs.

Thereafter, in 2016, a search and seizure operation was conducted at the business premises, being Paras Twin Tower B, Gurgaon, of M3M India Limited company. However, the assessee's name was also added to the panchnama drawn at the aforementioned business premises, despite the fact that no search and seizure under section 132 had been authorized in the name of the assessee.

During the proceedings, it was found that the assessee owner 75 acres of land at Bhiwadi, Rajasthan. In AY 2011-12, the assessee had into separate development agreements dated 07.09.2010 with five independent



companies and raised INR 2 crores from each company towards land development. These facts had been duly recorded in its books of accounts and disclosed by the assessee during the search and seizure proceedings were conducted against it.

Additionally, the assessee contended that no adverse remark regarding such development land at Bhiwadi had been made in the assessment order dated 28.04.2014.

High Court Rulings

On the basis of the search at M3M business premises the revenue noted that incriminating material against assessee had been found and consequently his name was included in the panchnama.

Accordingly, a notice under section 153A was issued to the assessee dated 05.01.2018. The assessee filed a settlement application before the Interim Board for Settlement on 29.0.2023, which was rejected under section 245D (4) of the Act.

The assessee further submitted responses on 24.01.2024, 29.01.2024 and 30.01.2024 raising objections with respect to the initiation of proceedings under section 153A as without jurisdiction and without authority in law.

Subsequently, a show cause notice was issued to assessee against an addition of INR 400 crore for AY 2011-12 as payment made to entities from undisclosed sources. An order under section 153(D) was finalized on 07.02.2024.

Aggrieved, the assessee filed a writ petition before the Hon'ble High Court.

Ruling

The Hon’ble High Court ruled in favour of the assessee by expressly declaring the proceedings initiated under 153A to be illegal as well as null and void in law. The Hon’ble Court examined the meaning of the term ‘panchnama’ and observed that it was merely a document reflecting a record of articles, materials and objects which may have been seized as incriminating documents at the time of search.It was further noted that the mention of a company only indicated that documents relating to the company were found during the search. Accordingly, the Hon’ble Court held that a panchnama cannot be treated as a means of authorization issued to the authorities under section 132 of the Act. In view of the same, it was opined that the Revenue was authorized to only conduct search at the business premises of M3M and not against the assessee. In consideration of the principles of law fortified by the cases of *Rao Shiv Bahadur Singh and another vs. State of Vindhya Pradesh AIR 1954 SC 322, State of UP vs. Singhara Singh and Ors. AIR 1964 SC 358* and *Nazir Ahmad vs. King Emperor 63 Indian Appeals 372,* the Hon’ble Court further declared that the procedure to conduct search has been laid down in section 153C of the Act.

The Hon’ble Court concluded that *“Thus, when there was no search conducted under section 132 and 132 A of the Act as against the petitioner and only a panchnama reflects the name of the petitioner prepared at the registered office of M3M India Limited, the action of the respondents in passing second assessment order on 07.02.2024 on the basis of notice under Section 153A dated 05.01.2018 id held to be unjustified and without jurisdiction. Once the search and seizure was conducted and assessment order dated 28.02.2014 was passed by invoking Section 153A of the Act for the AY 2006-07 to 2012-13, fresh order without conducting search and seizure operation would not be sustainable in law.”*

Source: High Court, Punjab and Haryana in Misty Meadows Pvt. Ltd. vs. Union of India & Ors vide CWP No. 5139 of 2024 dated May 13, 2024.

HC Holds Section 11(3) Not Applicable When Donation Given to Other Charitable Institutions Was Not of Permanent Nature

Facts

The assessee filed a return of income along with Form 10B declaring Nil income on 30.09.2009 which was processed under section 143(1) of the Act wherein the case was selected for scrutiny assessment under the Action Plan Guidelines and due notices were issued to the assessee. On 24.03.2011, a revised return was filed by the assessee, reflecting fresh computation of income accompanied with the reasons substantiating the modifications.The revised return was also selected for scrutiny under CASS and notice under section 143(2) of the Act was issued to the assessee.

The reasons assigned for submission of the revised return were stated to be on account of a sum of INR 20 crore which had been set apart as accumulated income under Section 11(2) of the Act during the financial year in question having been utilized to extend donations to other charitable institutions.

It was stated that the aforesaid sum though transferred to the Trust Fund Account was utilized for granting corpus donations to other charitable trusts Additionally, it was asserted that out of the aforesaid accumulated amount, the fund had got utilized to the extent of INR 20 crores while granting donations to other charitable trusts.

The AO held that extending donations to other charitable trusts would amount to utilization of the funds for a purpose other than those for which the surplus was accumulated under Section 11(2) and thus violative of Section 11(3)(c) and Section 11(3)(d) of the Act and accordingly finalized the assessment.

Aggrieved, the assessee appealed before the CIT(A) who favoured the assessee with respect to the issue of accumulation of 15% under section 11(2) of the Act.

Consequently, the revenue approached the Tribunal for against the CIT(A) order, however the Tribunal affirmed the order passed by the Tribunal.

Thus, the matter reached the Hon’ble High Court for adjudication.

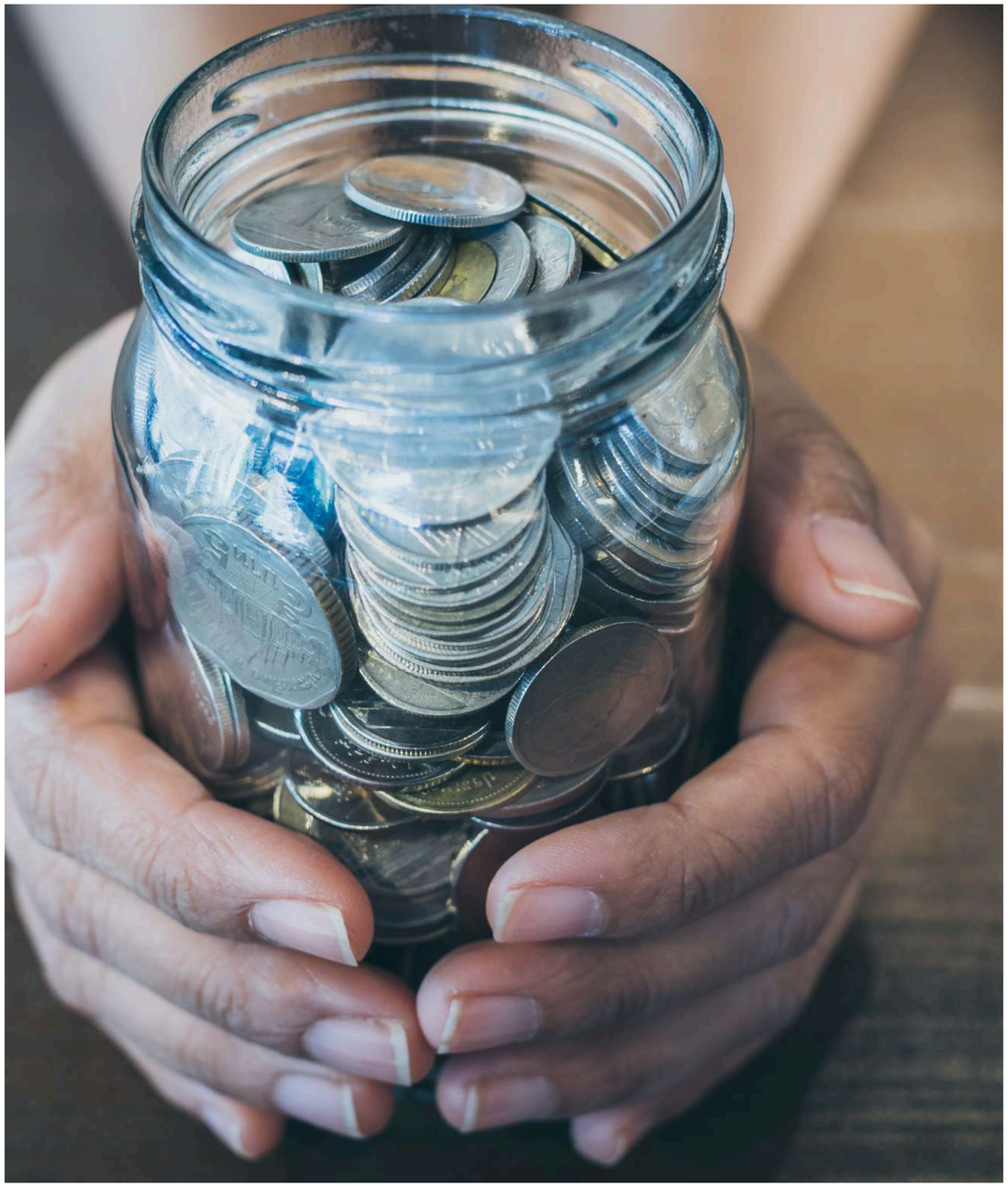
High Court Rulings

Ruling

The Hon’ble Court ruled in favour of the assessee while dismissing the appeals preferred by the Revenue. It referred to the case of *Additional Commissioner of Income Tax vs. A.L.N. Rao Charitable Trust (1995) 6 SCC 625,* wherein the Hon’ble Supreme Court had expounded the law on section 11(1)(a) and section 11(2) and their interplay with each other.

The Hon’ble Court Further referred to the Hon’ble Allahabad High Court ruling in the case of *Commissioner of Income Tax (Central) vs. J.K. Charitable Trust (1992) 196 ITR 31* where in the issue of whether donations made to other charitable trusts would be hit by section 11(3). Additionally, the Hon’ble Court observed that although the money was donated out of accumulated income, the money was retrieved within two months. It was also noted the adverse consequences would have been attracted provided the accumulated income was utilized for a purpose other than charitable or religious, or if the income was not used for the purpose for which it was accumulated during the period of five years as envisaged under section 11(2)(a).

The Hon’ble Court conclusively held that as per the facts of the case there was no permanent endowment made and nor could it be said that the donation showcased a degree of permanency. Therefore, as the donations were reversed and had only been advanced for a short duration, the High Court affirmed the Tribunal’s order.



“High Court, Delhi in CIT (Exemptions) vs. M/s Jamnalal Bajaj Foundation vide ITA No. 808/2017 dated May 31, 2024.”

ITAT Allows Deduction under section 54; Holds Date of Possession of New Property Equivalent to Date of Acquisition of the Property

Facts

The assessee was a non-resident individual. During the relevant assessment year, information was received from the Assistant Commissioner of Income Tax 18(2), Mumbai, through which it was evident that the assessee had sold a flat, numbered in Fiona, Hiranandani estate, Thane. The flat was jointly owned by him along with his wife, Mrs. Rita Shah, and was sold for a consideration of INR 13.8 Lakhs as on 10.02.2011.

On 31.03.2018, a notice under section 148 was issued to the assessee, however the same along with the subsequent notices were not complied by the assessee.

Consequently, the assessment was finalized on 28.12.2018 under section 144(1) of the Act by treating INR 45.67 lakhs, being the assessee's 50% share of the consideration on sale of property, as short-term capital gain and adding it to the total income of the assessee.

On appeal, the same was upheld by the CIT(A). Consequently, the matter reached the Tribunal for adjudication.

Source: Tribunal, Mumbai in Sunil Amritlal Shah vs. The ITO vide ITA No. 4069/MUM/2023 dated May 13, 2024.

Ruling

The Tribunal ruled in favour of the assessee. The sole issue was whether the deduction under section 54 of the Act claimed by the assessee was allowable if assessee had entered into agreement to sale on 25.07.2009 in view of the fact that the purchase of property or the date of possession of property was 02.02.2011.

The Tribunal held that the assessee was *"entitled to deduction u/s 54 of the act on purchase of new property considering the date of possession, when it is completed, as the date of purchase of property as agreement to purchase the property was for under construction property.*

By entering in to an Agreement to purchase assessee has acquired right to purchase the property and did not purchase the property as same was under construction. Section requires —Purchase|| of property."

The Tribunal relied on the following precedents to arrive at the above-mentioned conclusion:

i.Hon'ble Delhi High Court in Principal Commissioner of Income Tax & Ors. vs. Akshay Sobti & Ors. (2020) 423 ITR 0321 (Delhi)

ii.Hon'ble Bombay High Court in case of Beena K Jain [217 ITR 363 (Bombay)

iii.Mumbai Tribunal in Bastimal K Jain vs. ITO [2016] 76 taxmann.com 368 (Mumbai)

Let's Connect

+91.135.2743283, +91.135.2747084

3rd Floor, MJ Tower, 55, Rajpur Road, Dehradun - 248001

E: info@vkalra.com | W: vkalra.com

Follow us on

For any further assistance contact our team at kmt@vkalra.com