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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 19.09.2023**

+ **ITA 537/2023**

PR. COMMISSIONER OF INCOME TAX
(CENTRAL)-2

..... Appellant

Through: Mr Sanjay Kumar, Sr. Standing
Counsel with Ms Easha and Ms
Hemlata Rawat, Standing Counsels.

versus

ANUJ BANSAL

..... Respondent

Through: Mr Kapil Goel with Mr Sandeep
Goel, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM APPL. 48330/2023 [*Application filed on behalf of the
appellant/revenue seeking condonation of delay of 03 days in filing the
appeal*]

CM APPL. 48331/2023 [*Application filed on behalf of the
appellant/revenue seeking condonation of delay of 15 days in re-filing the
appeal*]

1. These are applications seeking condonation of delay in filing and re-filing.
2. According to the appellant/revenue, there is a delay of 3 days in filing of the appeal and 24 days in re-filing the appeal.



3. Counsel for the respondent/assessee submits that he would have no objection if the delay is condoned.

3.1 It is ordered accordingly.

4. Consequently, the above-captioned applications stand disposed of, in aforesaid terms.

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5. This appeal concerns Assessment Year (AY) 2017-18

6. *Via* this appeal, the appellant/revenue seeks to assail the order dated 31.10.2022 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].

7. Mr Sanjay Kumar, learned senior standing counsel, who appears on behalf of appellant/revenue, informs us that insofar as the respondent/assessee’s cross-objection for the same AY i.e., AY 2017-18 was concerned, it was disposed of by the Tribunal via order dated 29.04.2022.

8. We are informed that the appellant/revenue preferred an appeal before this court against the order dated 29.04.2022, which was numbered as ITA No. 368/2023. This appeal was disposed by this court *via* decision dated 13.07.2023, tilted ***Pr. Commissioner of Income Tax (Central)-2 vs Anuj Bansal***, 2023:DHC:4924-DB. In that order, we have made the following observations:

“...13. In another words, it was emphasised that the approval was granted without examining the assessment record or the search material. The relevant observations made in this behalf by the Tribunal in the impugned order are extracted hereafter:

*“17.1 However, in the present case, we have no hesitation in stating that **there is complete non-application of mind by the Learned Addl. CIT before granting the approval. Had there been application of mind, he would not have approved the draft assessment order, where the returned income of Rs. 87,20,580/-.***



Similarly, when the total assessed income as per the AO comes to Rs. 16,69,42,560/-, the Addl. CIT could not have approved the assessed income at Rs. 1,65,07,560/- had he applied his mind. The addition of Rs. 15,04,35,000/- made by the AO in the instant case is completely out of the scene in the final assessed income shows volumes.

17.2 Even the factual situation is much worse than the facts decided by the Tribunal in the case of Sanjay Duggal (supra). In that case, at least the assessment folders were sent whereas **in the instant case, as appears from the letter of the Assessing Officer seeking approval, he has sent only the draft assessment order without any assessment records what to say about the search material. As mentioned earlier, there are infirmities in the figures of original return of income as well as total assessed income and the Addl. CIT while giving his approval has not applied his mind to the figures mentioned by the AO. Therefore, approval given in the instant case by the Addl. CIT, in our opinion, is not valid in the eyes of law. We, therefore, hold that approval given u/s 153D has been granted in a mechanical manner and without application of mind and thus it is invalid and bad in law** and consequently vitiated the assessment order for want of valid approval u/s 153D of the Act.

In view of the above discussion, we hold that the order passed u/s 153A r.w.s. 43(3) has to be quashed, thus ordered accordingly. The ground raised by the Assessee is accordingly allowed”.

[Emphasis is ours]

“14. In this appeal, we are required to examine whether any substantial question of law arises for our consideration.

15. Having regard to the findings returned by the Tribunal, which are findings of fact, in our view, no substantial question of law arises for our consideration. The Tribunal was right that there was absence of application of mind by the ACIT in granting approval under Section 150D. It is not an exercise dealing with a immaterial matter which could be corrected by taking recourse to Section 292B of the Act.

16. We are not inclined to interdict the order of the Tribunal...”

9. In view of aforesaid facts and circumstances, and since the annulment



of the assessment order has been sustained by this Court, no substantial question of law arises for our consideration in this appeal.

10. Accordingly, the appeal is closed.
11. Parties will act based on the digitally signed copy of the order.

**RAJIV SHAKDHER
JUDGE**

**GIRISH KATHPALIA
JUDGE**

SEPTEMBER 19, 2023/RV

Click here to check corrigendum, if any