

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
&
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No.-485/Del/2020
(Assessment Year: 2015-16)**

Balvinder Kumar 686, Old Lajpat Rai Market, Delhi.	Vs.	Pr. CIT-16 Drum Shape Building, I.P. Estate, New Delhi.
PAN No. AABPN9884E		
Appellant		Respondent

Assessee by	Shri Rakesh Gupta, Adv.
Revenue by	ShrinSatpal Gulati, CIT DR

Date of hearing:	02.12.2020
Date of Pronouncement :	10.12.2020

ORDER

PER K. NARASIMHA CHARY, JM

Aggrieved by the order dated 20/12/2019 under section 263 of the Income Tax Act, 1961 (for short "the Act") passed by the principal Commissioner of Income Tax-16, New Delhi ("Ld. PCIT") in the case of Sh. Balvinder Kumar Nanda ("the assessee") for the assessment year 2015-16, the assessee filed this appeal.

2. Brief facts of the case are that the assessee is an individual and engaged in the business of purchasing the sales of electronics components. He has filed his return of income on 18.08.2015, declaring total income of Rs. 5,07,98,490/-. The return was processed u/s 143(1) of the Act, and thereafter, it was selected for limited scrutiny through CASS on the issue of "increase in capital". Notice u/s 143(2) of the Act was issued on 19.09.2016, assessee entered appearance and during the course of hearing, the assessee was required to explain substantial

increase in the capital account. Requisite details were filed by the assessee. Vide order dated 16/8/2017, as could be seen from the impugned order, the income of the assessee was assessed at a total income of Rs. 5,07,98,490/- as shown in the returned income, observing that no discrepancy was found on the issue under consideration.

3. Subsequently, Ld. Principal Commissioner of Income Tax , Delhi - 16, New Delhi (hereinafter called the "PCIT") issued a notice u/s 263 on 10.05.2019 stating that the assessment order was found to be erroneous in so far as it was prejudicial to the interests of the revenue, inasmuch as the computation shown by the assessee was accepted by the learned Assessing Officer without seeking any details regarding the working of indexed cost of acquisition at Rs. 4,92,06,793/-. Ld. PCIT further stated that the ownership over 2/3rd of the property was acquired by the assessee on 21.11.2012, but while indexing the cost of acquisition, the base year was taken as F.Y. 2007 - 08, and therefore, the assessee was not entitled to the benefit of indexation from F.Y. 2007 - 08 to the year till he became the owner. According to the Ld. PCIT two different amounts were claimed in the same year, but the AO did not examine whether, it was a case of multiple claims for the same amount, and the learned Assessing Officer should have called for the bills regarding cost of acquisition also.

4. Assessee had computed capital gains at Rs. 4,63,18,027/-, while the Ld. PCIT computed the capital gains at Rs. 5,79,33,606/, and the assessee was required to show-cause that why the computation made by the Ld. PCIT may not be substituted in place of the computation made by the assessee. The assessee furnished written submissions explaining his computation. Ld. PCIT, however, did not agree with the assessee and passed the revisionary order on 20.12.2019, setting aside the matter to the file of the Ld. AO with the direction to make fresh assessment as per law after giving the assessee an opportunity of being heard.

5. It is submitted on behalf of the assessee that there is no dispute that the

case of assessee was picked up for assessment under the category of limited scrutiny; that the Ld. PCIT did not call for record, but went by the Revenue done by the learner joint Commissioner thereby abdicating his jurisdiction which resulted in lack of application of mind on the part of the Ld. PCIT; that the Ld. PCIT remanded the matter to the file of the learned Assessing Officer to examine the same under section 54 of the Act whereas the claim of the assessee was under section 54 EC of the Act, which clearly establishes the want of application of mind by the Ld. PCIT; and the Ld. PCIT went wrong in deciding the issue relating to the indexation of the cost of acquisition has to be computed. He further submitted that the ambit of the assessment for limited scrutiny under CASS was admittedly in relation to the verification of "increase in capital" in response to which the assessee had furnished documents regarding transactions in the property to show the increase in capital, Learned Assessing Officer could not have travelled beyond inquiry into the increase in capital in view of the CBDT instruction No. 7/2014, 20/2015 and 5/2016 and also the CBDT letter dated 13 No. 2017, and thus, computation of capital gains was beyond the purview of the assessment and, therefore, Ld. PCIT could not have at all entered into the field of computation of capital gains by holding that the order of the learned Assessing Officer was erroneous and prejudicial to the interests of the revenue. Ld. AR also argued at length on the merits of the observations made by the Ld. PCIT.

6. Ld. AR also placed reliance on the decisions reported in Deccan Paper Mills Co. Ltd. vs. CIT in ITA 1013 AND 1635/PUN/2015, Aakash Ganga Promoters & Developers vs. PCIT in ITA No.164/CTK/2019, M/s R.H. Property vs. PCIT IN ITA No. 1906/Mum/2019 and Sonali Hemant Bhavsar vs.PCITINITA No.742/M/2019 in support of his contentions.

7. Ld. DR placing reliance on the impugned order and submitted that when there was patent error on the face of the computation of income, failure of the learned Assessing Officer to look into that aspect by calling for the relevant

material ended up in miscarriage of justice and therefore the Ld. PCIT is justified in interfering with the same under section 263 of the Act.

8. We have gone through the record in the light of the submissions made on either side. There is no dispute that the case of the assessee was picked up for scrutiny under the category of limited scrutiny. This fact is established from the assessment order and also the notice issued under section 143(2) of the Act. It is also not in dispute that the CBDT issued the instructions relied upon by the assessee and for the sake of convenience we extract the relevant portions thereof hereunder: -

“CBDT Instruction No. 7/2014

The reason(s) for selection of cases under CASS are displayed to the Assessing Officer in AST application and notice u/s 143(2), after generation from AST, is issued to the taxpayer with the remark ".Selected under Computer Aided Scrutiny Selection (CASS)". The functionality in AST is being modified suitably to flag the reasons for scrutiny selection in AIR/CIB/26AS cases. This functionality is expected to be operationalized by 15th October, 2014. Further, the Assessing Officer while issuing notice under section 142(1) of the Act which is enclosed with the first questionnaire would proceed to verify only the specific aspects requiring examination/verification. In such cases, all efforts would be made to ensure that assessment proceedings are completed expeditiously in minimum possible number of hearings without unnecessarily dragging the case till the time-barring date.

CBDT Instruction No. 20/2015

3. As far as the returns selected for scrutiny through CASS-2015 are concerned, two type of cases have been selected for scrutiny in the current Financial Year- one is 'Limited Scrutiny' and other is 'Complete Scrutiny'. The assessee concerned have duly been intimated about their cases falling either in 'Limited Scrutiny' or 'Complete Scrutiny' through notices issued under section 143(2) of the Income-tax Act, 1961 ('Act'). The procedure for handling 'Limited Scrutiny' cases shall be as under:

(a)

*(b) The Questionnaire under section 142(1) of the Act in Limited Scrutiny * cases shall be confined only to the specific reasons/issues for which case has been picked up for scrutiny. Further, the scope of enquiry shall be restricted to the Limited Scrutiny' issues.*

CBDT Instruction No. 5/2016

“4. It is further clarified that in cases under 'Limited Scrutiny' the scrutiny assessment proceedings would initially be confined only to issues under 'Limited Scrutiny' and Questionnaires, enquiry, investigation etc. would be restricted to such issues. Only upon completion of case to

'Complete Scrutiny' after following the procedure outlined above, the AO may examine the additional issues besides the issue(s) involved in 'Limited Scrutiny'. The AO shall also expeditiously intimate the taxpayer concerned regarding conducting 'Complete Scrutiny' in such cases."

CBDT Letter dated 30.11.2017

J Instances have come to notice of CBDT where some Assessing Officers are travelling beyond their jurisdiction while making assessments in Limited scrutiny cases by initiating inquiries on new issues without complying with mandatory requirements of the relevant CBDT Instructions dated 26-9-2014, 29-12-2015 and 14-7-2016. These instances have been viewed very seriously by the CBDT and in one case the Central Inspection Team of the CBDT was tasked with examination of assessment records on receipt of a letter at the offices of several irregularities. Amongst other irregularities, it was found that no reasons had been recorded for expanding the scope of limited scrutiny, no approval was taken from the PCIT for the conversion of the limited scrutiny case to a complete scrutiny case and the order sheet was maintained very perfunctorily. This gave rise to a very strong suspicion of mala fide intentions."

9. The above CBDT instructions and the letter clearly establish that it's not open for the learned Assessing Officer to travel beyond the reason for selection of the matter for limited scrutiny and on that aspect the assessment order in this case is in accordance with the instructions governing the field. In such circumstances it has to be seen whether the Ld. PCIT is justified in holding the assessment order to be erroneous insofar as it is prejudicial to the interest of the Revenue for the learned Assessing Officer not considering the aspects which are beyond the purview of limited scrutiny.

10. In the Deccan Paper Mills Co. Ltd. vs. CIT in ITA 1013 AND 1635/PUN/2015, Pune Bench of the Tribunal held, that,

"40. Now, coming to the aspect of book profits which was considered by the Commissioner and the order of the Assessing Officer was held to be erroneous and prejudicial to the interest of revenue. In this regard, it may be pointed out that the case of assessee was picked up for scrutiny under CASS for the limited purpose of verifying the Chapter VI-A deduction. Once the case is picked up for specific purpose under CASS, then it is outside the purview of the Assessing Officer to look into any other aspect other than the aspect for which it is picked up. Hence, the Assessing Officer has not formed any opinion in respect of computation of book profits in the hands of assessee. Once, no such opinion has been formed by the Assessing Officer, the Commissioner has erred in holding the order of the Assessing Officer to be erroneous and prejudicial to the interest of revenue in this regard. Accordingly, we reverse the findings of the Commissioner.

Accordingly, we hold that the order passed by the Commissioner under section 263 of the Act is invalid and the same is quashed for both the assessment years.”

In M/s R.H. Property vs. PCIT, ITA No. 1906/Mum/2019 it was held that,-

“As a matter of fact, what cannot be done directly cannot be done indirectly. Accordingly, in terms of our aforesaid observations, we are of the considered view that as the A. O had aptly confined himself to the issue for which the case of the assessee was selected for limited scrutiny, therefore, no infirmity can be attributed to his order for the reason that he had failed to dwell upon certain other issues which were clearly beyond the realm of the reason for which the case of the assessee was selected for limited scrutiny as per the AIR information. We thus not being able to concur with the view taken by the Pr. CIT that the order passed by the A.O under Sec. 143(3), dated 10.10.2016 is erroneous, therefore, set aside his order and restore the order passed by the A.O. As we have quashed the order passed by the Pr. CIT under Sec. 263 on the ground of invalid assumption of jurisdiction by him, therefore, we refrain from advertent to and therein adjudicating the contentions advanced by the Id. A. On the merits of the case, which thus are left open.”

11. Similarly, is the view taken consistently by the benches of this Tribunal in the other two cases also, relied upon by the assessee. In the circumstances, in view of the consistent view taken in similar matters we are of the considered opinion that when the assessing officer is bound to follow the CBDT instructions and while following such instructions and after verification of the material furnished by the assessee on the aspect covered by the limited scrutiny, is not open for the Ld. PCIT to say that not advertent to the other aspects of the competition would render the assessment order erroneous and prejudicial to the interest of the Revenue. With this view of the matter we find that the impugned order cannot be sustained and, therefore, the same is liable to be quashed. We accordingly quash the same.

12. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 10/12/2020

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Dated: 10.12.2020

*Kavita Arora, Sr. PS

Sd/-
(K. NARSIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI