

आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष  
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.1589/PUN/2018

निर्धारण वर्ष / Assessment Year : 2015-16

Shashi Bhushan Majoor  
Sahakari Sanshta Ltd.,  
Nehru Road,  
Jalna – 431203

.... अपीलार्थी/Appellant

PAN: AACAS0766J

Vs.

The Income Tax Officer,  
Wad 1, Jalna

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1590/PUN/2018

निर्धारण वर्ष / Assessment Year : 2015-16

Radhe Radhe Labour Co.Op. Society Ltd.,  
R.P. Road,  
Jalna – 431203

.... अपीलार्थी/Appellant

PAN: AAAAR2827F

Vs.

The Income Tax Officer,  
Wad 1, Jalna

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri K. Srinivasan

प्रत्यर्थी की ओर से / Respondent by : Shri M.K. Verma

सुनवाई की तारीख / Date of Hearing : 14.03.2019	घोषणा की तारीख / Date of Pronouncement: 04.04.2019
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

Both the appeals filed by different assessee are against respective orders of CIT(A)-1, Aurangabad, both dated 20.07.2018 relating to assessment year 2015-16 against respective orders passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. Both the appeals of different assessee on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience. However, in order to adjudicate the issues, we are making reference to the facts and issues in ITA No.1589/PUN/2018.

3. The assessee in ITA No.1589/PUN/2018 has raised the following grounds of appeal:-

1. *On the facts and circumstances of the case and in law, the Hon'ble CIT Appeal-1, Aurangabad has erred in confirming the addition of Rs.1539405/-. The A.O. has adopted 8% profit on the gross receipt in spite the assessee maintained regular books of account which are duly audited. The book profit may kindly be accepted and the addition made by the A.O. may kindly be deleted.*
2. *On the facts and circumstances of the case and in law, the CIT Appeal-1, Aurangabad has erred in confirming the order of the A.O. in rejecting the deduction U/S.80P (ii) (a) (vi) of the I.T. Act the same may kindly be allowed.*
3. *On the facts and circumstances of the case and in law the A.O. has erred in not following the instruction of CBDT and has scrutinized and made addition on the issues which was not covered under the CASS while selecting the case under scrutiny. Therefore, the deduction U/S.80P (ii) (a) (vi) may kindly be allowed as the same is not disallowed as per law / instruction framed by the board.*

4. The learned Authorized Representative for the assessee at the outset pointed out that the ground of appeal No.3 raised by assessee is the jurisdiction issue and needs to be adjudicated first.

5. Briefly, in the facts of the case, the assessee was Labour Co-operative Society and for the year under consideration had filed return of income declaring total income of ₹ 12,050/- after claiming deduction under section 80P(2)(a)(vi) of the Act. The case of assessee was selected for scrutiny under CASS on the ground that the assessee had shown low profit before interest and tax. The Assessing Officer took up the assessment proceedings against assessee and made the disallowance under section 80P(2)(a)(vi) of the Act. The case of assessee before us is that once the case has been selected under CASS for limited scrutiny and where no permission has been taken from the Commissioner for complete scrutiny, then no other addition / disallowance can be made in the hands of assessee. In this regard, the learned Authorized Representative for the assessee referred to preliminary questionnaire issued by the Assessing Officer along with notice issued under section 142(1) of the Act. He then, referred to CBDT circular issued on 14.07.2016. Further, the learned Authorized Representative for the assessee placed reliance on the ratio laid down by Pune Bench of Tribunal in Suresh Jugraj Mutha Vs. Addl.CIT in ITA No.05/PUN/2016, relating to assessment year 2011-12, order dated 04.05.2018 and also in bunch of appeals with lead order in Nazare Vikas Karyakari Seva Sahakari Society Ltd. Vs. ITO in ITA No.1518/PUN/2018, relating to assessment year 2014-15, order dated 08.02.2019.

6. The learned Departmental Representative for the Revenue placed reliance on the orders of authorities below and pointed out that the CIT(A) has considered the said issue.

7. We have heard the rival contentions and perused the record. The case of assessee was picked up for scrutiny under CASS. The reason for selection was mentioned in the preliminary questionnaire issued to the assessee along with notice issued under section 142(1) of the Act and the same reads as under:-

“5. **Reasons for selection is “Low profit before interest and Tax (PBT) shown”. In this regard, necessary interest account along with reasons for low profit may be submitted with evidences.”**

8. In the said notice, it was very categorically mentioned that reply to the questionnaire was to be issued and in the submissions specifically CASS should be quoted. The perusal of assessment order however, reflects the Assessing Officer to have proceeded and disallowed the deduction claimed under section 80P(2)(a)(iv) of the Act.

9. The issue which arises is whether in cases picked up for limited scrutiny, can any other issue be decided without taking necessary permission from the concerned Commissioner? In this regard, first we will make reference to CBDT, which vide Instruction No.5/2016, dated 14.07.2016 had clearly pointed out that in the cases falling under limited scrutiny or complete scrutiny, it is clarified that in cases under limited scrutiny, the scrutiny assessment proceedings would initially be confined only to the issue under limited scrutiny and only upon conversion of case to complete scrutiny after following the

procedure i.e. after taking approval from the Pr.CIT / CIT, the Assessing Officer may examine additional issues beside the issue involved in limited scrutiny.

10. The Tribunal in the case of Nazare Vikas Karyakari Seva Sahakari Society Ltd. Vs. ITO (supra) on similar circumstances of extension of scope of scrutiny to other issues and making addition on such issues, where the case of assessee was picked up for scrutiny under CASS have held as under:-

*“3. On hearing the parties and the precedent, we find the similar issue was the subject-matter of adjudication before Pune Bench of the Tribunal in the case of Suresh Jugraj Mutha vs. Addl.CIT vide ITA No.05/PUN/2016 for the assessment year 2011-12, order dated 04.05.2018. In this case, the Tribunal analyzed the scope of the circulars/provisions and came to the conclusion that such additions made by the Assessing Officer are not sustainable in law. For the sake of completeness of this composite order, we proceeded to extract the relevant paragraphs from 9 onwards of the said order of the Tribunal (supra) and the same are extracted hereunder :-*

*“9. We heard both the parties and perused the orders of the Revenue on the legal issue raised by the assessee. We have also considered the decisions relied on by both the parties. It is an undisputed fact that the reason for which the case was picked up for limited scrutiny relates to the AIR information on the cash deposits in the savings bank account. It is also an undisputed fact that the AO did not obtain the written approval of the concerned Commissioner before extending the scope of scrutiny to the interest disallowed and denial of claim of deduction u/s.54 of the Act. Further, it is on record that the Board did not permit the Assessing Officers to extend the scope of scrutiny to the issues other than the ones which are authorised the Board in this regard under CASS. It is also a fact that judgment cited by the Ld. DR for the Revenue in the case of Banque Nationale De Paris Vs. CIT 237 ITR 518 (Bom.) was not issued in connection with the jurisdiction of the AO in matters relating to extension of areas of scrutiny to the ones than the authorised ones by the Board. In this connection, we perused the CBDT Instruction No.7/2014, dated 26-09-2014 and find it relevant to extract the relevant lines. The same reads as under :*

*“4. In case, during the course of assessment proceedings, it is found that there is potential escapement of income exceeding Rs.10 lakhs (for non-metro charges, the monetary limit shall be Rs.5 lakhs) on any other issue(s) apart from the AIR/CIB/26AS information based on which the case was selected under CASS requiring substantial verification, **the case, may be taken up for comprehensive scrutiny with the approval of the Pr.CIT/DIT concerned. However, such an approval shall be accorded by the Pr.CIT/DIT in writing after being satisfied about merits of the issue(s) necessitating wider and detailed scrutiny in the case.** Cases so taken up for detailed scrutiny shall be monitored by the Jt. CIT/Addl.CIT concerned.”*

10. We also perused the CBDT letter dated 08-09-2010 which deals with selection of cases for scrutiny on the basis of data in AIR returns and subsequent assessment proceedings. The instructions given in the said letter reads as under :

“2. The above mentioned guidelines have been reconsidered by the Board and it has been decided that the scrutiny of such cases would be limited only to the aspects of information received through AIR. However, a case may be taken up for wider scrutiny with the approval of the administrative Commissioner, where it is felt that apart from the AIR information there is a potential escapement of income more than Rs.10 Lacs.

3. It has also been decided that in all the cases **which are picked for scrutiny only on the basis of AIR information, the notice u/s.143(2) of Income Tax Act, 1961 should clearly be stamped with “AIR” case.**

11. Further, on perusing the orders of the Revenue, we find the facts are similar to the ones already decided by the Pune Bench of the Tribunal in the case of M/s. S.F. Chougule Vs. JCIT (supra) is relevant to the facts present case of the assessee. We therefore proceed to extract the relevant findings given by the Tribunal here as under :

“10. The learned Authorized Representative for the assessee pointed out that the assessee was engaged in road construction and building of projects. He pointed out that during the course of Survey on 30.01.2008, the assessee had made a declaration of Rs.33,18,000/- + Rs.12 lakhs + Rs.13,467/- which was included in the return of income filed by the assessee. He further stated that the case of assessee was picked up for scrutiny. The learned Authorized Representative for the assessee brought to our attention, the application made under the Right to Information Act, as to the basis for selection of case of the assessee for the relevant year under scrutiny. It was specifically asked whether the case was selected for scrutiny under CASS. In reply, the Central Public Information Officer stated that the case of assessee was not selected for scrutiny under CASS. Further, the assessee has asked as to why its case was selected for scrutiny since it was covered by relaxed scrutiny norms. In answer, it was pointed out that the case was selected for scrutiny, in view of guidelines for selection of scrutiny issue during financial year 2010-11; copies of RTI application and the reply are placed at pages 20 to 22 of the Paper Book. The learned Authorized Representative for the assessee further referred to the criteria of guidelines for income-tax scrutiny, copy of which is placed at page 23 and 24 of the Paper Book and reiterated that in the case of assessee, Survey was carried out and criteria was fixed for not picking up the case under scrutiny and the assessee clearly fulfils the same. He further pointed out that in case the criteria is not met with, then as per clause (g), the Assessing Officer can select any return for scrutiny after recording reasons and after obtaining the approval of CCIT/DGIT. In this regard, he pointed out that no such approval was received from the CCIT. Our attention was drawn to the letter dated 13.05.2013 issued from the office of ACIT,

Circle (1), Sangli, wherein the Assessing Officer informed the assessee that there was no record to show that previous approval of CCIT was obtained to select the cases manually for scrutiny for assessment year 2008-09. The learned Authorized Representative for the assessee stressed that where the selection was not through CASS but was manually made, then the previous approval of the CCIT was compulsory. Referring to the order of CIT(A), the assessee pointed out that the CIT(A) states that the case of assessee was selected through CASS and also mentions that the contention of assessee would have been acceptable had the case been manually selected for scrutiny. The learned Authorized Representative for the assessee further placed reliance on the ratio laid down by the Hyderabad Bench of Tribunal in *Smt. Nayana P. Dedhia Vs. ACIT (2003) 86 ITD 398 (Hyd)* for the proposition of binding nature of CBDT circulars upon the IT authorities. He further pointed out that the said decision has been approved by the Hon'ble High Court of Andhra Pradesh in *CIT Vs. Smt. Nayana P. Dedhia (2004) 270 ITR 572 (AP)*. Further, he referred to the ratio laid down by the Hon'ble High Court of Delhi in *CIT Vs. Best Plastics (P) Ltd. (2007) 295 ITR 256 (Del)* for the proposition that where the guidelines are laid down for selection of cases for scrutiny and if the case of the assessee was taken up for scrutiny in violation of CBDT Instructions, then the assessment order has to be set aside. He further referred to the decision of Hon'ble Bombay High Court in *Bombay Cloth Syndicate Vs. CIT (1995) 214 ITR 210 (Bom)* for the proposition that the CBDT Instructions were binding.

11. The learned Departmental Representative for the Revenue on the other hand, pointed out that as per the guidelines of CBDT, the cases could be selected, may be not through CASS. Our attention was drawn to the order of Assessing Officer, wherein he has elaborately dealt with the issue that income increased during the year only because of notional disallowance of expenses under section 40(a)(ia) of the Act and not because of declaration of additional income by the assessee. He stresses that the case was selected under normal scrutiny proceedings and excess expenditure of bad debts claimed by the assessee were disallowed by the Assessing Officer. He then went into merits of the case. It was also stressed by the learned Departmental Representative for the Revenue that the declared income in the hands of assessee means the book profit.

12. The learned Authorized Representative for the assessee in rejoinder pointed out that in the case of assessee, he declared additional income during the course of Survey. He further pointed out that the details of expenses were compared by the Assessing Officer.

13. We have heard the rival contentions and perused the record. The preliminary issue raised in the present appeal by way of ground of appeal No.5 is against the validity of assessment made in the hands of assessee. The assessee claims that the case of assessee was not selected for scrutiny under CASS but was selected manually. For selection of any

*return for scrutiny manually by the Assessing Officer, the requirement of guidelines issued for this purpose for relevant assessment year was that the same should be after obtaining approval of the CCIT / DGIT. Since no such approval was received from the CCIT / DGIT, the Assessing Officer had no jurisdiction to proceed with the scrutiny assessment in the case of assessee. The assessee had raised the issue before the Assessing Officer and CIT(A) but the facet of argument before the authorities below was that the case of assessee could not be selected for scrutiny under CASS since in the case of Survey, certain conditions were laid down and the assessee having fulfilled the said conditions, then no scrutiny could takes place in the hands of assessee.*

14. *In the facts of the case, Survey under section 133A of the Act was carried out at the premises of assessee on 30.01.2008. During the course of Survey, the assessee made declaration of additional income of Rs.45,93,467/- which was offered as additional income over and above the income to be returned for the year under consideration. The assessee claims that it had disclosed the said additional income in its return of income wherein the return was filed declaring income of Rs.81,64,598/-. However, the perusal of computation of income reflected that net profit shown in Profit & Loss Account was Rs.11,62,084/- and certain disallowances were made on account of personal expenses, capital expenses and disallowances under section 40(a)(ia) of the Act at Rs.68,31,574/- and other disallowances and the income was aggregately shown at Rs.85,69,672/- The Assessing Officer and CIT(A) thus, were of the view that the assessee had not included the additional income of Rs.45,93,467/-, where it had declared the business income at only Rs.11,62,084/-, though it had filed the return of income declaring income of Rs.81,64,590/-. The case of authorities below is that the assessee had not fulfilled the conditions laid down in the guidelines for taking up the case for scrutiny assessment year under consideration and hence, there was no merit in the claim of assessee that it had fulfilled the conditions laid down in guidelines. The whole gamut of arguments and discussion in the orders of Assessing Officer and CIT(A) is on this account that the assessee had not fulfilled the conditions relating to Survey cases for financial year and the case of the assessee could be picked up for scrutiny. The assessment order was passed on 09.09.2010 and the appellate order was passed on 04.01.2012. The assessee thereafter moved an application under the Right to Information Act, wherein a specific question asked was with regard to selection of scrutiny and other relevant information relating to assessment year 2008-09. The specific question asked by the assessee was whether its case was selected for scrutiny under CASS and in case it was not selected under CASS and why the same was picked up for scrutiny. The assessee also asked that under which norms the case was selected for scrutiny and whether relaxation in selection of cases in which survey action was carried out on fulfilling the criteria was available in the said norms or not. In reply, it was stated that the guidelines / instructions were followed and since the guidelines were confidential in nature, the copy of same could not be provided.*

*In reply to the next question whether the case was selected under CASS, the categorical answer was 'No'. The said RTI reply further stated that the case was selected for scrutiny in view of the guidelines contained in F.No.225/93/2009/ITA.II.*

15. *The said guidelines for selection of scrutiny were published and it was pointed out that the said guidelines were only for the use of Officers of Income Tax Department and the same could not be disclosed even under the RTI Act, 2005. The said application under the RTI Act and the order under the RTI Act are placed at pages 20 to 22 of the Paper Book. The assessee has also placed the copy of guidelines issued for scrutiny, copy of which is placed at page 23 of Paper Book. The said guidelines were for use of Income Tax Department, wherein selection criteria was provided which was applicable to all Income Tax returns at all stations. **The guidelines vis-à-vis survey cases are provided therein and vide clause (g), it is provided that the Assessing Officer may select any return for scrutiny after recording reasons and after obtaining the approval of CCIT / DGIT.** The cases under this category should be selected, if there are compelling reasons and cases not selected under CASS. These cases are watched by the CCIT / CIT for the quality of assessment. The said guidelines are as per F.No.225/93/2009/ITA.II. The reply under RTI also refers to the said guidelines and admittedly, these guidelines were used to select the case of assessee for scrutiny. Further, the assessee also filed on record letter dated 13.05.2013 issued by the ACIT, Circle (1), Sangli, wherein in reply to the letter of assessee, it has been informed that there is no record to show that previous approval of CCIT / DGIT was obtained to select the case manually for scrutiny for assessment year 2008-09. So, taking into consideration the said correspondence which has come into existence after the date of passing of assessment order and appellate order, the first thing to be taken note of is that the case of assessee was not selected for scrutiny in CASS which is the reply given in answer to RTI query as per letter dated 12.04.2012. The second aspect is that the case of assessee was selected for scrutiny in view of the guidelines contained in F.No.225/93/2009/ITA.II. The assessee has placed the copy of said guidelines on record at page 23 of the Paper Book, wherein it is provided that the case of any assessee may be selected for scrutiny after recording reasons and after obtaining the approval of CCIT / DGIT. In other words, the case of assessee could be picked up for scrutiny manually but the same had to be after recording reasons for such an action and after obtaining the approval of CCIT / DGIT. **However, the Assessing Officer vide letter dated 13.05.2013 has categorically mentioned that no previous approval of CCIT was obtained to select the case manually for scrutiny for assessment year 2008-09. In the above circumstances, where the order has been passed against the norms laid down by the CBDT vide its guidelines which were binding upon the Assessing Officer, then the order passed by the Assessing Officer is bad in law. The instructions issued by the CBDT are to be strictly followed by the authorities i.e. Assessing Officer and in the absence of the same, the assessment order passed in the case is annulled.** Such is*

*the proposition laid down by the Hon'ble High Court of Andhra Pradesh in CIT Vs. Smt. Nayana P. Dedhia (supra) and the Hon'ble High Court of Delhi in CIT Vs. Best Plastics (P) Ltd. (supra). **In view thereof, we hold that where the Assessing Officer has failed to follow the guidelines issued for selecting the cases for scrutiny and in the facts of the present case, where the case was selected manually for scrutiny, but no previous approval of CCIT was obtained, then the Assessing Officer lacks jurisdiction to carry out the scrutiny assessment in the present case and accordingly, assessment order passed by the Assessing Officer is bad in law.** Hence, we hold so. Since the assessment order is held to be bad in law, the issue on merits becomes academic and the grounds of appeal raised by both the assessee and the Revenue in their respective appeals are infructuous. The appeal of assessee is thus, allowed and the appeal of Revenue is dismissed."*

*Therefore, the Board circular do not permit the AO from converting the limited scrutiny case like the present one to the unlimited one without the approval of Administrative Commissioner of Income Tax. AO did not mention the reasons for not taking such an administrative approval before making the said addition. As such, the Pune Bench of the Tribunal has already taken the favourable view in these matters in favour of the assessee. We do not understand why AO failed to take approval for such conversion. Considering the settled nature of the issue, we allow the legal ground raised by the assessee vide Ground No.1 and hold that the assessment order passed by the AO is bad in law and void-ab initio. Consequently, we find adjudication of other grounds by the assessee on merits becomes academic. Therefore, the said grounds are dismissed are academic."*

4. *From the above, it is settled legal issue at the level of the Tribunal, Pune Bench, in the cases, selected under CASS, the additions on the non-CASS issues can only be made after obtaining due permission from the superior authorities and the said approval of the superior authorities in writing should be available on records. In all these ten appeals under consideration, we find there is no whisper about the obtaining of such approval from the superior authorities before the scrutiny scope is extended to non-CASS issues. In any case, the Assessing Officer did not make any addition on account of the issues selected under CASS. Therefore, in our considered view, the said order of the Tribunal covers the common solitary preliminary issue raised before us in all the ten appeals. Accordingly, the preliminary issue raised by the assessee in all these ten appeals is allowed."*

11. Following the same parity of reasoning, we hold that in the absence of any approval received from Pr.CIT / CIT, there is no merit in the order of Assessing Officer in making any addition other than on the issues selected under CASS. Thus, the assessment order passed in the present case suffers from infirmity and the same is quashed. Since we have decided the

jurisdictional issue raised vide ground of appeal No.3, the other grounds of appeal would become academic.

12. The facts and issues in ITA No.1590/PUN/2018 are identical to the facts and issues in ITA No.1589/PUN/2018 and our decision in ITA No.1589/PUN/2018 shall apply *mutatis mutandis* to ITA No.1590/PUN/2018.

13. In the result, both the appeals of assessee are allowed.

Order pronounced on this 4<sup>th</sup> day of April, 2019.

Sd/-  
(ANIL CHATURVEDI)  
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-  
(SUSHMA CHOWLA)  
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 4<sup>th</sup> April, 2019.

GCVSR

**आदेश की प्रतिलिपि अद्येषित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Aurangabad;
4. The Pr.CIT-1, Aurangabad;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune