

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.670/PUN/2016

निर्धारण वर्ष / Assessment Year : 2009-10

Shri Nilesh Vasant Shende,
MZSK & Associates
Chartered Accountants,
Level-3, Business Bay,
Plot No.84, Wellesley Road,
Near RTO, Pune-411 001.
PAN : ANXPS3098L

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Central Circle-2(2), Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Neelesh Khandelwal
Revenue by : Shri Vishwas Mundhe

सुनवाई की तारीख / Date of Hearing : 27.06.2019

घोषणा की तारीख / Date of Pronouncement : 28.06.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the
Ld. Commissioner of Income Tax (Appeals)-12, Pune dated 04.01.2016 for the
assessment year 2009-10 as per the grounds of appeal on record.

2. The Ld.AR of the assessee has also raised additional ground and sought permission to address this additional ground at the very outset of the hearing. The said additional ground is reproduced herein below:

“Additional ground : *The huge additions (more than Rs.10 Lakhs other than CASS subject matter made by the Assessing Officer cannot be sustained in absence of previous approval of the Administrative Commissioner as directed by the Board’s Instruction in respect of “CASS” assessment. Therefore, assessment order passed in violation of Board’s Instructions, which are binding upon the AO is certainly bad in law and void-ab-initio, may please be quashed and addition may please be deleted. Appellant be granted just and proper relief in this respect.*

The ground raised above is a legal ground and goes to the root of the matter. The adjudication of the above ground, in our belief, do not require any investigation of new facts pertaining to the case. It is requested that the additional ground may kindly be allowed to be raised by the appellant and the same may kindly be admitted and adjudicated in the interest of justice since the issue goes to the root of the matter.”

This additional ground relates to the issue of making addition by the Assessing Officer outside the said limited scrutiny under Computer Aided Scrutiny Selection (in short ‘CASS’) for the assessment year 2009-10 without obtaining the written approval of the concerned Commissioner of Income Tax as directed by the Circular of CBDT dated 8th September, 2010 and Board Instruction No.7/2014 dated 26.09.2014.

2.1 The Ld. AR of the assessee in order to establish the basic foundation of this additional ground raised before us invited our attention to Para 4 of the Assessing Officer’s order where details were called for in respect of information under CASS. Thereafter, the scrutiny assessment proceeding was started as per information under CASS. The Ld. AR also referred to page 73 of the paper book wherein notice u/s.143(2) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) has been issued by the Assessing Officer to the assessee and therein also, it is specifically mentioned that the case has

been selected through CASS. The copy of notice is made part of this order as Annexure-1 and the same is reproduced herein below:

Annexure-1

“Notice under section 143(2) of the Income Tax Act, 1961

Office of the DCIT/ACITCEN Circle 2(1), Pune/167

PAN No : ANXPS3098L

Dated : 28/09/2010

To,
SHRI NILESH VASANT SHENDE
11 5 Sarathi Construction'
501 EDEH HALL,
NEAR OM SUPAR MARKET,
MODEL COLONY,
PUNE
MAHARASHTRA 411 016

Sir/Madam

There are certain points in connection with the return of income submitted by you on 04th February, 2010 for the assessment year 2009-10 on which I would like some further information.

2. You are hereby required to attend my office on 21st October, 2010 at 11.00AM either in person or by a representative duly authorized in writing in this behalf produce or cause there to be produced at the said time any documents, accounts and any other evidence on which you may rely in support of the return filed by you.

This case has been selected through CASS.

Yours faithfully

ASSESSING OFFICER

Name.....

Designation.....

Sd/-

S.K. NIMKAR

*Assistant Commissioner of Income Tax,
Central Circle 2(1), Pune.”*

2.2 Thereafter, the Ld. AR of the assessee referred to pages 74, 75 and 76 of the Paper book. Pages 74 and 75 are the Board Instruction No.7/2014

dated 26.09.2014 and page 76 is the CBDT Circular dated 8th September, 2010 and in both the Board Instruction and CBDT Circular, it is mandatory for the Assessing Officer in a case selected under CASS requiring substantial verification a comprehensive approval should be procured and accorded by the Pr. Commissioner of Income Tax and the Deputy Commissioner of Income Tax in writing. For ready reference, these documents are made part of this order as follows:

CBDT Circular dated 08.09.2010

F. No.225/26/2006-ITA.II (Pt.)

*Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes*

New Delhi, dated the 8th September, 2010

To
All Chief Commissioners of Income Tax
All Directors General of Income Tax

Sir/Madam,

Subject: Selection of cases for scrutiny on the basis of data in AIR returns and subsequent assessment proceedings-regarding.

Reference is invited to Board's letter of even number dated 23rd May, 2007 regarding scope of enquiry in the scrutiny cases selected only on the basis of information received through the AIR returns.

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".

This should be immediately brought to the notice of all the officers working in your region.

*Yours faithfully,
(Ajay Goyal)
Director (ITA.II)
Telefax :23092151*

Copy to :

1. Chairman and all Members of CBDT
2. Director General of Income Tax (Systems)
3. All Officers and Technical Sections of CBDT
4. Directors of Income Tax (Inv.)/IT & Audit/ Vigilance/Inv./RSP &PR/Recovery
5. Dy. Director of Inspection (P & PI), New Delhi.
6. C &AG of India (40 copies)
7. Asst. Director of Inspection (Bulletin), New Delhi
8. JS & Legal Advisor, Ministry of Law and Justice, New Delhi
9. Director of Income Tax (O & MS), New Delhi
10. Director General, NADT
11. Commissioner (AAR)
12. Guard file.”

Board Instruction No. 7/2014 dated 26.09.2014

Instruction No.7/2014

Government of India
Ministry of Finance
Department of Revenue (CBDT)

Room No. 143E, North-Block, New-Delhi
Dated the 26th of September 2014

To,

All Pr. Chief-Commissioners of Income-tax/Chief-Commissioners of Income-tax
All Pr. Directors-General of Income-tax/Directors-General of Income-tax

Sir/Madam,

Subject: - Scope of enquiry in cases selected for scrutiny during the Financial Year 2014-2015 on basis of AIR/CIB/26AS mis-match-regarding-

It has come to the notice of the Board that during the scrutiny assessment proceedings some of the AOs are routinely calling for information which is not relevant, for enquiry into the issues to be considered. This has been causing undue harassment to the taxpayers and has also drawn adverse criticism from several quarters. Further, feedback and analysis of such orders indicates that many times the core issues, which formed the basis of selection of the case for scrutiny were not examined properly. Such instances primarily occurred in cases selected for scrutiny under Computer Aided Scrutiny Selection ('CASS') for verification of specific information obtained from third party sources which apparently did not match with the details submitted by the tax payer in the return of income.

2. Therefore, for proper administration of the Income-tax Act, 1961 ('Act'), Central Board of Direct Taxes, by virtue of its powers under section 119 of the Act, in supersession of earlier instructions/ guidelines on this subject, ere by

directs that the cases selected for scrutiny during the Financial Year 2014-20 5 under CASS, on the basis of either AIR data or CIB information or for non reconciliation with 26AS data, the scope of enquiry should be limited to verification these particular aspects only. Therefore, in such cases, an Assessing Officer s hall confine the questionnaire and subsequent enquiry or verification only to the specific point(s) on the basis of which the particular return has been selected for scrutiny.

3. 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 operationalised 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 mad to ensure that assessment proceedings are completed expeditiously in minimum possible number of hearing without unnecessarily dragging the case till the time barring date.

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.

5. The contents of this Instruction should be immediately brought to the notice of all concerned for strict compliance.

6. Hindi version to follow.

*Sd/-
(Rohit Garg)
Deputy Secretary to the Government of India*

(F. No.225/229/2014-ITA.II)

Copy to :

- 1. Chairman and all Members of CBDT*
- 2. All officers and Technical Sections of CBDT*
- 3. Director of Income Tax (inv.) & Audit/Vigilance/Inv./RSP & PR/Recovery*
- 4. Director of Income Tax (O & MS), New Delhi*
- 5. ITCC Division of CBDT (3 copies)*
- 6. Database cell for uploading on IRS Officers website*
- 7. Guard file.*

*Sd/-
(Rohit Garg)
Deputy Secretary to the Government of India."*

Having demonstrated these documents, the Ld. AR vehemently argued that no such written approval from the concerned Commissioner of Income Tax / Pr. Commissioner of Income Tax was obtained by the Assessing Officer in the case of assessee before framing the assessment order. Therefore, the assessment order passed in violation of Board Instruction as well as CBDT Circular as referred herein above should be held as void ab-initio and therefore, should be quashed. Placing reliance in support of this proposition, the Ld. AR further referred to the decision of Co-ordinate Bench of the Tribunal, Pune in ITA No.05/PUN/2016 for the assessment year 2011-12 decided on 04.05.2018 wherein on the same issue and on similar facts and circumstances, the Tribunal has held the assessment order to be bad in law.

3. Per contra, the Ld. DR has placed reliance on the orders of the Sub-ordinate Authorities.

4. We have perused the case records and heard the rival contentions. We have also given considerable thought to the judicial pronouncement placed before us. It is clearly evident from the facts on records that the case was selected for scrutiny under CASS as per the notice u/s.143(2) of the Act issued to the assessee. That under such circumstances, the relevant Board's Instruction and CBDT Circular as hereinabove referred to clearly states that written approval from the Commissioner of Income Tax/ Pr. Commissioner of Income Tax has to be obtained in such case.

In the instant case before us, nowhere on record, it is seen that prior written approval was obtained from the Commissioner of Income Tax.

4.1 In the same facts and circumstances, the Co-ordinate Bench of the Tribunal, Pune in ITA No.05/PUN/2016 (supra.) faced with the similar issue which is as follows:

*“1. The huge additions (more than Rs.10 lacs) other than CASS subject matter (i.e. verification of cash deposit in saving bank account and scope of scrutiny is limited) **made by the Assessing Officer cannot be sustained in absence of previous approval of the administrative Commissioner as directed by the Board’s instruction in respect of “CASS” assessment.** Therefore, assessment order passed in violation of Board’s instructions, which are binding upon the A.O. is certainly bad in law and void ab-initio, may please be squashed and addition may please be deleted.”*

That with regard to this issue, arguments advanced by the parties herein are reproduced herein below:

“5. Before us, at the outset, Ld. Counsel for the assessee referring to the said legal issue raised vide Ground No.1, submitted that making addition on account of interest disallowance and denial of deduction u/s.54 of the Act are not the issues for which the case was taken up for limited scrutiny under CASS. Therefore, the additions made by the AO are not sustainable. In support of the above, assessee filed a letter written by the AO to the assessee dated 17-11-2015 and letter dated 14-08-2012 and bring out giving reasons for scrutiny selection etc. Assessee also filed the Board’s Instruction No.07/2014, dated 26-09-2014 and Board’s Lr. No. F.No.225/26/2006-ITA.II (PL), dated 08-09-2010 which refers to the another Board’s letter dated 23-05-2007 relating to the AO’s jurisdiction in matters relating to the selection of cases for scrutiny on the basis of AIR returns and demonstrated that the AOs are required to scrutiny the cases to the limited issues for which cases are picked for limited scrutiny. Ld. Counsel for the assessee mentioned that exceptions are provided to the above rule but the same is required to be done only with the approval of the Administrative Commissioner of Income-Tax which was not done in the present case. According to the said circulars of the Board, there is requirement of mentioning the same in the notice u/s.143(2) of the Act clearly, stamped on the said notice clearly mentioning “AIR case” etc. Ld. Counsel also submitted that for extending the scrutiny to the interest disallowance and denial of deduction u/s.54 of the Act in the present case, AO did not obtain any Administrative approval from the concerned CIT. The notices do not indicate the same. This fact is made out in the AO’s letter dated 11-04-2018 addressed to the Administrative CIT. Therefore, Ld. Counsel for the assessee submitted that the assessment order passed by the AO dated 12-03-2014 is unsustainable and void ab-initio. For this proposition, Ld. Counsel for the assessee relied on the following two decisions of the Pune Bench of the Tribunal and submitted that the case of the assessee stands squarely covered and in favour of the assessee :

1.M/s. Nitin Killawala & Associates Vs. ITO – ITA No.1611/M/2013

2.M/s. S.H. Chougule Vs. JCIT – ITA No.458/PN/2012 and ITA No.605/PN/2012, dated 21-12-2016

6. *On the other hand, Ld. DR for the Revenue submitted that circular No.225/26/2006-ITA.II(PL), dated 08-09-2010 issued by the CBDT does not override the provisions of the statute. Elaborating the same, Ld. DR submitted that if the AO is authorised to scrutinise the accounts of the assessee and claims in the returns as per the provisions of section 143(2) of the Act and the CBDT Circular should not create any hurdles on the AO in matters of scrutiny assessment once notice u/s.143(2) of the Act is issued. Therefore, it is the case of the Ld. DR that AO has all powers to examine any issue which he deems fit despite the restrictions imposed by the Board on the AOs. For this proposition, he relied on the judgment of Hon'ble Bombay High Court in the case of Banque Nationale De Paris Vs. CIT 237 ITR 518.*

7. *During the rebuttal time, on the issue of overriding powers of the AO vide the directions issued by the CBDT through the circular, Ld. Counsel for the assessee submitted that it is settled legal proposition that the AOs are under obligation to abide with the letters/circulars issued by the CBDT in this regard and the same are issued for a class of assessees. It is binding on the part of the AO to follow the instructions. The instructions of the CBDT are issued only to reduce the burden on the taxpayers and it has the power to relax the rigours of the law in favour of the taxpayers. For this proposition, Ld. Counsel relied on the following case laws :*

1.CIT Vs. Nagesh Knitwears Pvt. Ltd. 345 ITR 135

2.CIT Vs. Mrs. Avtar Mohan Singh 136 ITR 645

3.Catholic Syrian Bank Ltd. Vs. CIT 343 ITR 0270

4 .Dattatraya Gopal Bhatt Vs. CIT 150 ITR 460

8. *Ld. Counsel also argued stating that the Board granted a provision to convert a limited scrutiny case to the unlimited one subject to the approval of the administrative CIT. Despite the same, the AO failed to comply with the same and AO assumed all powers in making addition outside the limited scrutiny norms. Therefore, Ld. Counsel argued that the additions are unsustainable in law as it is a serious procedural irregularity.”*

The Co-ordinate Bench of the Tribunal, Pune after hearing arguments of the parties has held as follows:

“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 take 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.”

4.2 That on perusal of the aforesaid order, the Tribunal clearly has considered therein the Board's Instruction No.7/2014 dated 26.09.2014 and CBDT Circular dated 08th September, 2010 and on the basis of these Board's Circulars, it is necessary to take written approval from the Administrative Commissioner in a case where scrutiny has been done on the basis of CASS. In absence of such prior written approval from the Administrative Commissioner any assessment order passed should have to be declared null and void. In the instant case, the assessment order suffers the same fate. Accordingly, we hold that the assessment order passed in the case of the assessee without any prior written approval from the Administrative Commissioner makes the assessment order void-ab-initio. We direct to quash the assessment order. The legal issue raised in the additional ground of appeal by the assessee is answered in his favour. Therefore, all other grounds raised in this appeal becomes academic in nature.

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

Order pronounced on 28th day of June, 2019.

Sd/-
ANIL CHATURVEDI
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 28th June, 2019.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-12, Pune.
4. The Pr.CIT, Central, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	27.06.2019	Sr.PS/PS
2	Draft placed before author	28.06.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		