

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCH 'A', JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
Before : Shri Vijay Pal Rao, JM & Shri Vikram Singh Yadav, AM

आयकर अपील सं./ITA No. 1419/JP/2019  
निर्धारण वर्ष/Assessment Year : 2014-15

Smt. Manju Kaushik C-30, Bhagwan Das Road C-Scheme, Jaipur	बनाम Vs.	The DCIT Range – 7 Jaipur
स्थायी लेखा सं./जीआईआर सं./P	AN/GIR No.: ADHPK 9678 K	
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Anil Goyal, CA  
राजस्व की ओर से/ Revenue by : Shri P.P. Meena, DCIT- DR

सुनवाई की तारीख/ Date of Hearing : 05/11/2019  
घोषणा की तारीख/ Date of Pronouncement : 09/12/2019

आदेश/ ORDER

PER VIJAY PAL RAO, JM

This appeal by the assessee is directed against the order of the ld.  
CIT(A)-3, Jaipur dated 22-10-2018 for the Assessment Year 2014-15.

The assessee has raised the grounds alongwith Form No. 36 as under:-

- "1. The orders of the learned AO and CIT(A) are bad in law and against facts of the case.*
- 2. The learned AO has erred in converting the case of Limited Scrutiny into case of Complete Scrutiny in complete disregard of various instructions issued by CBDT from time to time. Therefore assessment order passed is null & void. The learned CIT(A) has erred in rejecting this ground of appeal.*

3. *The learned AO has erred in giving deduction under section 54B at Rs 24,32,800/- only as against deduction claimed Rs 89,77,226/-. The learned CIT(A) has erred in not allowing this ground of appeal.*

3.1 *The learned AO has erred in holding that agreement for sale dated 1/4/2013 filed before him was a sham transaction and after thought of the assessee.*

3.2. *The learned AO has erred in making addition in the name of 'Share application money as discussed above' Rs 65,44,426/- whereas there was no such case.*

4. *The learned AO has erred in not following the binding decisions of Supreme Court and other High Courts holding that provisions giving incentive for growth and development should be interpreted liberally. The learned CIT(A) has erred in not allowing this ground of appeal.*

5. *The learned AO has erred in not accepting the claim of the assessee that agriculture land sold was out of the purview of definition of capital assets as given in section 2(14) of Income Tax Act. Therefore no Capital Gain tax was chargeable in this case. The learned CIT(A) has erred in not allowing this ground of appeal.'*

The assessee has subsequently modified the Ground No. 2 which reads as under:-

*"In the facts and circumstances of the case, and in law, the learned AO has erred in converting the case from limited scrutiny to complete scrutiny. The action of learned AO is illegal, unjustified, arbitrary and against the facts of the case. Relief may be granted by quashing entire assessment proceedings, being void and illegal."*

2.1 At the time of hearing, the Id.AR of the assessee has stated at Bar that the assessee does not want to press the Ground Nos. 1 and 5 of the grounds of appeal and the same may be dismissed as not pressed for

which the ld. DR has no objection. Hence, the Ground Nos. 1 and 5 of the assessee are dismissed being not pressed.

3.1 The Ground No. 2 of the assessee is regarding validity of assessment framed by the AO for want of jurisdiction to take up the issue of disallowance of deduction u/s 54B of the Act without having necessary approval of conversion of limited scrutiny to comprehensive scrutiny.

3.2 Ld.AR of the assessee submitted that the assessee filed her return of income on 30-09-2014 declaring total income of Rs. 36,60,870/-. The case of the assessee was selected for limited scrutiny under CASS. The AO issued notice u/s 143(2) of the Act on 18-09-2015 and thereafter also issued a notice u/s 142(1) on 4-07-2016 alongwith questionnaire on the issue of increase in capital. Subsequently vide notice u/s 142(1) of the Act dated 25-11-2016, the AO proposed to disallow the claim of deduction u/s 54B of the Act. The ld.AR of the assessee submitted that assumption of the jurisdiction by the AO to scrutinize the claim of deduction u/s 54B of the Act without approval of the competent authority to convert the case from limited scrutiny to complete scrutiny is invalid. Consequently, the assessment framed by the AO is liable to be quashed The ld.AR further contended that there is nothing in the assessment order to show that the

AO has sought any permission or approval for conversion of limited scrutiny to complete scrutiny. Therefore, the initiation of proceedings by the AO for complete scrutiny by issuing notice u/s 142(1) is without jurisdiction and authority. He has further contended that even otherwise the said initiation of proceedings for full scrutiny is not permissible when the notice u/s 143(2) was issued only for the purpose of conducting limited scrutiny and the subsequent initiation of proceedings by the AO for full scrutiny is after limitation period for issuing notice u/s 143(2) of the Act. Thus the proceedings initiated by the AO for full scrutiny is without the notice u/s 143(2) of the Act and even after the limitation period for issue of notice u/s 143(2) is invalid and liable to be quashed. He has referred to CBDT Instruction No. 5/2016 dated 14-07-2016 and submitted that CBDT has issued specific instruction that the case selected for limited scrutiny cannot be taken up for full scrutiny without prior approval of the competent authority. These instructions have been repeated by the CBDT time and again vide Instruction Nos. 7/2014 dated 26-09-2014, 20/2015 dated 29-12-2015 and 5/2016 dated 14-07-2016 that the AO shall expeditiously intimate the tax payers concerned regarding conducting complete scrutiny in the cases where the AO

proposed to convert the limited scrutiny to complete scrutiny . He has further contended that the assessee came to know about this fact only through the assessment order that the AO converted her case from limited scrutiny to complete scrutiny. Therefore, there is a gross violation of instructions CBDT which renders the assessment order null and void. The Id.AR of the assessee has relied on various decisions of this Tribunal on this point.

3.3 On the other hand, the Id. DR has submitted that the AO has converted the limited scrutiny to complete scrutiny only after taking the approval from the Pr. CIT. He has submitted that the AO sent a proposal of conversion of limited scrutiny to full scrutiny vide letter dated 11-11-2016 and Pr.CIT vide his letter dated 24-11-2016 accorded the approval for complete scrutiny from limited scrutiny. Thus the notice issued u/s 142(1) of the Act on 25-11-2016 is only after approval accorded by the Pr. CIT on 24-11-2016. He has filed the copy of the proposal sent by the AO dated 11-11-2016 and the communication of approval accorded by the Pr. CIT dated 24-11-2016. Thus the Id. DR has submitted that once the approval was accorded by the Pr. CIT then the conversion was in

accordance with the provisions of law and initiation of proceedings by the AO for full scrutiny is valid.

3.4 In rejoinder, the ld.AR of the assessee has submitted that the alleged proposal and approval accorded by the Pr. CIT is an afterthought and pre-dated. The AO has not mentioned anything in the assessment order regarding any proposal for conversion of limited scrutiny to full scrutiny and the assessee was also not intimated about the said proposal of conversion of limited scrutiny to full scrutiny. Therefore, these proposal and approval are nothing but an afterthought documents prepared by the department. He has referred to the letter dated 28-11-2016 of Addl. CIT which was received by the AO on 29-11-2016. Therefore, initiation of proceedings by issue of notice u/s 142(1) for full scrutiny is without the alleged approval communicated and in the knowledge of the AO.

3.5 We have considered the rival submissions as well as the relevant materials available on record. There is no dispute that the case of the assessee was selected for limited scrutiny under CASS whereby the AO initiated proceedings by issue notice u/s 143(2) of the Act on 18-09-2015 only on the issue of introduction of capital/ increase in the capital.

Subsequently, the AO has converted the limited scrutiny into complete scrutiny and issued notice u/s 142(1) of the Act on 25-11-2016 whereby the AO proposed to disallow the claim of deduction u/s 54B of the Act. The AO has given the details of approval accorded by the Pr.CIT in the assessment order and also referred the letter dated 24-11-2016. There is no dispute that scope of enquiry in case selected for limited scrutiny under CASS is only to the extent of the issue for which case was selected for scrutiny under CASS. CBDT has issued instructions from time to time in this respect and has specifically instructed the taxing authorities that scope of enquiry should be limited to verification of all the particulars for which limited scrutiny was taken up under CASS. However, in case during the assessment proceeding if the AO is of the view that substantial verification of other issue is also required then the case may be taken up for comprehensive scrutiny with the approval of the Pr.CIT/DIT concerned. It is also instructed that such an approval shall be accorded by the Pr.CIT/DIT in writing after being satisfied about the merits of the issue (s) necessitating wider and detailed scrutiny in the case. In the latest Instruction No. 5/ 2016 dated 14-07-2016, CBDT has again instructed the taxing authorities in para 2 to 4 as under:-

“2. In order to ensure that maximum objectivity is maintained in converting a case falling under 'Limited Scrutiny' into a 'Complete Scrutiny' case, the matter has been further examined and in partial modification to Para 3(d) of the earlier order dated 29.12.2015, Board hereby lays down that while proposing to take up 'Complete Scrutiny' in a case which was originally earmarked for 'Limited Scrutiny', the Assessing Officer ('AO') shall be required to form a reasonable view that there is possibility of under assessment of income if the case is not examined under 'Complete Scrutiny'. In this regard, the monetary limits and requirement of administrative approval from Pr. CIT/CIT/Pr. DIT/DIT, as prescribed in Para 3(d) of earlier Instruction dated 29.12.2015, shall continue to remain applicable.

3. Further, while forming the reasonable view, the Assessing Officer would ensure that:

- a. there exists credible material or information available on record for forming such view;
- b. this reasonable view should not be based on mere suspicion, conjecture or unreliable source; and
- c. there must be a direct nexus between the available material and formation of such view.

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 conversion 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 concerned regarding conducting 'Complete Scrutiny' in such cases.”

Thus the AO is duty bound to follow the instructions in case limited scrutiny assessment proceeding are proposed to be converted into complete scrutiny and without following said procedure and necessary

approval of the competent authority conducting an enquiry on the issue which is outside the limited scrutiny would be beyond the jurisdiction of the AO. This Tribunal has taken the consistent view on this issue in the series of decisions that if the AO has taken up the issue of scrutiny without converting the limited scrutiny to complete scrutiny by taking a prior approval from the competent authority then the said order passed by the AO will be in nullity and beyond his jurisdiction. In case of M/s. CBS International Projects Pvt. Ltd vs CIT, ITAT Delhi Bench vide its order (ITA No.144/Del/2019 dated 28-02-2019) has considered the relevant instruction issued by the CBDT on this issue and held in para 13 to 16 as under:-

*"13. CBDT Instruction No. 20/2015 is as under:*

*"Scrutiny Assessments-some important issues and scope of scrutiny in cases selected through Computer Aided Scrutiny Selection ('CASS')-reg.*

*The Central Board of Direct Taxes ('CBDT'), vide Instruction No.7/2014 dated 26.09.2014 had clarified the extent of enquiry in certain category of cases specified therein, which are selected for scrutiny through CASS. Further clarifications have been sought regarding the scope and applicability of the aforesaid Instruction to cases being scrutinized.*

*2. In order to facilitate the conduct of scrutiny assessments and to bring further clarity on some of the issues emerging from the aforesaid Instruction, following clarifications are being made:*

*i. Year of applicability: As stated in the Instruction No.7/2014, the said Instruction is applicable only in respect of the cases selected for scrutiny through CASS-2014.*

*ii. Whether the said Instruction is applicable to all cases selected under CASS: The said Instruction is applicable where the case is selected for scrutiny under CASS only on the parameter(s) of AIR/CIB/26AS data. If a case has been selected under CASS for any other reason(s)/parameter(s) besides the AIR/CIB/26AS data, then the said Instruction would not apply.*

*iii. Scope of Enquiry: Specific issue based enquiry is to be conducted only in those scrutiny cases which have been selected on the parameter(s) of AIR/CIB/26AS data. In such cases, the Assessing Officer, shall also confine the Questionnaire only to the specific issues pertaining to AIR/CIB/26AS data. Wider scrutiny in these cases can only be conducted as per the guidelines and procedures stated in Instruction No. 7/2014.*

*iv. Reason for selection: In cases under scrutiny for verification of AIR/CIB/26AS data, the Assessing Officer has to intimate the reason for selection of case for scrutiny to the assessee concerned.*

*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 assessees 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. In 'Limited Scrutiny' cases, the reasons/issues shall be forthwith communicated to the assessee concerned.*

*b. The Questionnaire under section 142 (1) of the Act in 'Limited Scrutiny' cases shall remain 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.*

*c. These cases shall be completed expeditiously in a limited number of hearings.*

*d. During the course of assessment proceedings in 'Limited Scrutiny' cases, if it comes to the notice of the Assessing Officer that there is potential escapement of income exceeding Rs. five lakhs (for metro charges, the monetary limit shall be Rs. ten lakhs) requiring substantial verification on any other issue(s), then, the case may be taken up for 'Complete Scrutiny' with the approval of the Pr. CIT/CIT concerned. However, such an approval shall be accorded by the by the Pr. CIT/CIT in writing after being satisfied about merits of the issue(s) necessitating 'Complete Scrutiny' in that particular case. Such cases shall be monitored by the Range Head concerned. The procedure indicated at points (a), (b) and (c) above shall no longer remain binding in such cases. (For the present purpose, 'Metro charges' would mean Delhi, Mumbai, Chennai, Kolkata, Bengaluru, Hyderabad and Ahmedabad).*

*4. The Board further desires that in all cases under scrutiny, where the Assessing Officer proposes to make additions or disallowances, the assessee would be given a fair opportunity to explain his position on the proposed additions/disallowances in accordance with the principle of natural justice. In this regard, the Assessing Officer shall issue an appropriate show-cause notice duly indicating the reasons for the proposed additions/disallowances along with necessary evidences/reasons forming the basis of the same. Before passing the final order against the proposed additions/disallowances, due consideration shall be given to the submissions made by the assessee in response to the show-cause notice.*

*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/- (Ankita Pandey)  
Under Secretary to  
Government of India"*

*14. With Instruction 7 of 2014, the Board has made it specifically clear that the scope of enquiry should be limited to verification of the particular aspects only. It has also been directed that an*

*approval is required from the PCIT/DIT, in writing, after being specific about the merits of the other issues for comprehensive scrutiny.*

*15. The said instruction reads as under:*

*"Instruction No. 7/2014*

*Government of India  
Ministry of Finance  
Department of Revenue (CBDT)  
Room No. 143E, North-Block, New-Delhi  
Dated the 26<sup>th</sup> of September, 2014*

*To AU Pr. Chief-Commissioners of Income-tax/Chief-Commissioners of Income-tax A*

*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/C1B /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 aver 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 sect on 119 of the Act, in supersession of earlier instructions/guidelines on this subject, hereby directs that the cases selected for scrutiny during the Financial Year 2014-20(15 under CASS, on the basis of either AIR data or CIB information or for non re-conciliation with 26AS data the scope of enquiry should be limited to verification of these are particular aspects only. Therefore, in such cases, an Assessing Officer shall confine the questionnaire and subsequent enquiry or verification only to these 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 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.*

*4. In case, during the course of assessment proceedings it is found that there is potential escapement of income exceeding Rs. 10 lakhs (if 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 14 which the case was elected 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 it. 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.*

*(Rohit Garg)*

*Deputy Secretary to the Government of India"*

*16. A perusal of the aforesaid instruction shows that the Assessing Officer can widen the scope of scrutiny even if it is selected for scrutiny assessment under CASS. However, the condition precedent for such action of the Assessing Officer is that he has to seek prior approval of the higher authorities. A perusal of the assessment order shows that the Assessing Officer has not mentioned as to when the permission from the PCIT was sought to make further enquiries in the case of the assessee. Considering the facts of the case in totality, in the light of the CBDT Instructions mentioned hereinabove, qua notice u/s 143(2) of the Act, we are of the considered opinion that the 15 assessment order so framed by the Assessing Officer is not in consonance with Instruction of the CBDT and, therefore deserves to be quashed. The order of the Id. CIT(A) is accordingly set aside."*

We fortify our view by the above cited decision of ITAT Delhi Bench. In the case in hand, though the AO has mentioned that approval was accorded by the Pr.CIT on 24-11-2016 and consequently he has initiated proceedings of complete scrutiny by issuing notice dated 25-11-2016. However, we find that said approval of Pr.CIT was communicated to the AO only on 29-11-2016. The relevant communication letter dated 28-11-2016 which was received by the AO on 29-11-2016 is as under:-



सत्यमेव जयते

Office of the

Addl. Commissioner of Income-tax,

Range-7, Jaipur

(C-95, Baba Sidhnath Bhawan, Lal Kothi Scheme, Jaipur)

No. Addl.CIT/R-7/JPR/2016-17/1686

Date: 28.11.2016

Dy. Commissioner of Income Tax,  
Circle-7, Jaipur

Sub.: - Proposal for conversation of limited Scrutiny case into complete scrutiny in the case of Smt. Manju Kaushik (PAN-ADHPK9678E) for the A.Y. 2014-15 -reg. -

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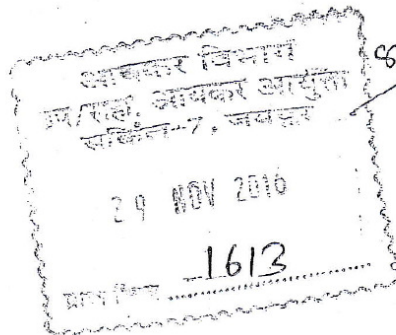
Please find enclosed herewith a copy of letter No. Pr.CIT-3/ITO(Hq.)/Comp.Scru./JPR/2015-16/3215 dated 24.11.2016 on the subject cited above.

You are directed to send Action Taken Report in this matter immediately.

(Rajendra Jha)

Addl. Commissioner of Income-tax,  
Range-7, Jaipur

Encl.: As above.



So. T. A.  
Place on re Corrd file  
Comdr  
29/11/16

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Therefore, the notice u/s 142(1) issued on 25-11-2016 for initiation of complete scrutiny assessment proceeding is prior to the receipt of the approval accorded by the Pr.CIT and thus it is apparent that AO has initiated the proceedings for full/ complete/ comprehensive scrutiny in anticipation of approval to be accorded by the Pr.CIT. It is also mandated by CBDT Instructions that competent authority has to grant approval only after satisfying itself about the requirements of comprehensive scrutiny of the case. Further the AO is also required to intimate the assessee regarding conversion of limited scrutiny to the complete scrutiny in such cases. It is pertinent to note that in the proceedings for limited scrutiny the AO was satisfied with the source of increase in the capital of the assessee and even did not proceed further after the reply and documents filed by the assessee in response to the notice u/s 142(1) dated 4-07-2016. Only after dropping the said notice, the AO issued fresh notice u/s 142(1) on 25-11-2016. The AO has finally made addition only on account of disallowance of deduction u/s 54B of the Act. Therefore, at the time of initiating the complete scrutiny, the issue under limited scrutiny was not pending with the AO as he was satisfied with the reply and documentary evidence on the said issue. In the case in hand, the AO has not intimated

the assessee about the conversion of limited scrutiny to complete scrutiny which is a serious violation of the instructions issued by the CBDT. Hence, we find that the AO has taken up the issue and initiated proceedings for complete scrutiny without necessary approval with him. Therefore, the issue taken up by the AO regarding disallowance of deduction u/s 54B is prior to the necessary approval communicated to the AO and therefore, in the absence of communication in writing to the AO about the approval, the assumption of jurisdiction by the AO is invalid. Consequently, the addition made by the AO by denying the deduction u/s 54B is not sustainable and the same is deleted.

3.6 Since we have deleted the addition on the legal ground, therefore, we do not propose to take up other issues raised by the assessee on the merits of the deduction u/s 54B of the Act.

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

Order pronounced in the open court on 09 /12/2019.

Sd/-  
( विक्रम सिंह यादव )  
(Vikram Singh Yadav)  
लेखा सदस्य/ Accountant Member

Sd/-  
(विजय पाल राव)  
(Vijay Pal Rao)  
न्यायिक सदस्य/ Judicial Member

जयपुर/ Jaipur  
दिनांक/ Dated:- 09/12/ 2019

**\*Mishra**

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

1. अपीलार्थी / The Appellant- Smt. Manju Kaushik, Jaipur
2. प्रत्यर्थी / The Respondent- The DCIT, Range-7, Jaipur
3. आयकर आयुक्त(अपील ) / CIT(A),
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.1419/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar