

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER,  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 2023/DEL/2019 ( A.Y 2015-16)**

Bothra Financial Services A-37, Ground Floor, Phase-2, Vivek Vihar New Delhi AAACB0422C <b>(APPELLANT)</b>	Vs	ITO Ward-5(4) Room No. 379, C. R. Building, New Delhi <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Ms. Kiran Kumari, Adv</b>
<b>Respondent by</b>	<b>Sh. Jagdish Singh, Sr. DR</b>

<b>Date of Hearing</b>	<b>25.02.2020</b>
<b>Date of Pronouncement</b>	<b>02.03.2020</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 28/12/2018 passed by CIT(A)-2 New Delhi for Assessment Year 2015-16.

2. The grounds of appeal are as under:-

1. *“That on the facts of the case and under the law, the Id. CIT(A) ought to had deleted the entire addition/disallowance of Rs.33,03,808/- made u/s 14A read with Rule 8D.*
2. *That on the facts of the case and under the law, the Id. CIT(A) has erred in restricting the addition / disallowance made u/s 14A read with Rule 8D, to the extent of Rs.4,27,000/- (which was the amount of dividend earned on the shares held as Stock-in-trade).*

3. *That on the facts of the case and under the law, the Id. CIT(A) has erred in J holding that Rs.4,27,000/- (which was the amount of dividend earned on the shares held as "Stock-in-trade") is to be included in the amount of Book Profit u/s 115JB.'*

3. The assessee e-filed its return of income declaring income of Rs.3,58,370/- on 27.09.2015. The assessment was held for limited scrutiny on the following points:

- (i) Sale of Property in Form 26QB
- (ii) Large Value sale of futures (derivatives) in a recognized stock exchange (STT code 5)
- (iii) Large Value of sale of share or unit which is settled otherwise than by the actual delivery or transfer
- (iv) Mismatch in sales turnover reported in Audit report and ITR
- (v) Low net profit or loss shown from large gross receipt
- (vi) Large squared up loans during the year (form 3CD)
- (vii) Large Value sale of option in securities (derivative) in a recognized stock exchange (STT code4)

The Assessing Officer assessed the income of the assessee at Rs. 36,62,178/- vide assessment order dated 30.12.2017 passed u/s 143(3) and made an addition / disallowance of Rs. 33,03,808/- u/s 14A read with Rule 8D. The Assessing Officer also mentioned in the assessment order that this amount of Rs. 33,03,808/- will also be added in the computation of Book Profit u/s 115JB of the Act as per provisions of clause (f) below Explanation-1 to section 115JB of the Act.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR pointed out that this case was selected for limited scrutiny and 14A disallowance was not at all mentioned in the said scrutiny. Therefore,

the assessment itself is beyond the scope of scrutiny and hence void ab initio.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. 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 Assessing Officer did not obtain the written approval of the concerned Commissioner before extending the scope of scrutiny in respect of disallowance under Section 14A of the Income Tax Act, 1961. Further, it is on record that the CBDT Instruction No.7/2014, dated 26-09-2014 did not permit the Assessing Officers to extend the scope of scrutiny to the issues other than the ones which are authorised by the Board in this regard under CASS. It is pertinent to note that this case was for limited scrutiny and in respect of Section 14A disallowance, no scrutiny was made by the Assessing Officer. This can be seen from the assessment order itself. Therefore, the assessment order itself is bad in law and void ab initio. Consequently, we find adjudication of other grounds by the assessee on merits becomes academic, hence not adjudicated at this juncture. Thus, the appeal of the assessee is allowed.

8. In result, the appeal filed by the assessee is allowed.

**Order pronounced in the Open Court on 02<sup>nd</sup> March, 2020.**

**Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 02/03/2020  
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	26.02.2020
Date on which the typed draft is placed before the dictating Member	26.02.2020
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	02.03.2020
Date on which the final order is uploaded on the website of ITAT	02.03.2020
Date on which the file goes to the Bench Clerk	02.03.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	