

**आयकर अपीलीय अधिकरण "SMC-II" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC-II" BENCH, MUMBAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजूनाथ जी, लेखा सदस्य के समक्ष ।  
BEFORE SRI MAHAVIR SINGH, VP AND SRI MANJUNATHA G, AM

आयकर अपील सं./ ITA No. 1730/Mum/2019

(निर्धारण वर्ष / Assessment Years 2015-16)

<b>Hazelnut Constructions Pvt. Ltd.</b> 514, Dalamal Towers, 211, FPJ Marg, Nariman Point, Mumbai (अपीलार्थी / Appellant)	बनाम/ Vs.	<b>The Income Tax Officer</b> Ward 3(1)(4) Mumbai (प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AABCH6233N		

अपीलार्थी की ओर से/ Appellant by	:	Shri Chetan Karia, AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Akhtar Ansari, DR

सुनवाई की तारीख / Date of hearing:	17.06.2020
घोषणा की तारीख / Date of pronouncement:	17.06.2020

**आदेश / ORDER**

महावीर सिंह, उपाध्यक्ष /

**PER MAHAVIR SINGH, VP:**

This appeal of assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-8, Mumbai, [in short CIT(A)], in ITA No. CIT(A)-8/IT-153/2017-18 dated 19.02.2019. The assessment was framed by the Income Tax Officer, Ward 3(1)(4), Mumbai (in short ACIT/ITO/ AO) for the A.Y. 2015-16 vide order dated 30.11.2017 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The first issue raised by assessee in its appeal is as regards to the assumption of jurisdiction by the Assessing



Officer for "Complete Scrutiny" whereas the case was selected for "Limited Scrutiny" under CASS for the Assessment Year 2015-16. For this, assessee has raised the following ground No.1: -

*"1. The learned Commissioner of Income Tax (Appeals) failed to understand that the order passed by assessing officer is beyond jurisdiction as being a limited scrutiny case, the learned officer has travelled beyond the issue for which the case was selected and the same therefore, deserves to be quashed."*

3. Brief facts of the case are that the assessee filed its return of income electronically on 28.09.2015 declaring total income / loss of (-) ₹10,76,308/-. As per the assessment order, the case was selected for scrutiny assessment under CASS and statutory notice under section 143(3) of the Act dated 20.09.2016 was issued and duly served on the assessee. A further notice under section 142(1) of the Act calling for details were issued and duly served on the assessee. The relevant assessment year involved in Assessment Year 2015-16 and assessment order under section 143(3) of the Act was passed vide order dated 30.11.2017. This ground of appeal challenges the assessment framed by the Assessing Officer on the issue that the Assessing Officer has had travelled beyond the issues for which the case was selected under the scheme of limited scrutiny. The assessee before CIT(A) and even now before us filed the copy of

notice issued under section 143(2) of the Act and points raised / issues identified for examination are as under:

*"(i) Minimum Alternate Tax (MAT) Liability mismatch*

*(ii) Unsecured loans"*

4. The relevant text of the notice issued reads as under: -

*"This is for your kind information that the return of income for Assessment year 2015-16 filed vide ack no. 827599031280915 on 28/09/2015 has been selected for Scrutiny. Following issues have been identified for examination:*

*i. Minimum Alternated Tax (MAT) liability mismatch*

*ii. Unsecured Loans*

*2. In view of the above, we would like to give you an opportunity to produce or cause to be produced, any evidence which you feel is necessary support of the said return of income on 26.09.2016 at 11.00 AM in the office of the undersigned.*

*3. Sending a communication to the undersigned in this regard shall also be*



*treated as sufficient compliance in case no evidence is sought to be produced as required in Para 2 above.*

*4. Specific questionnaire/ show-cause notice shall be sent giving you another opportunity in case any adverse view is contemplated.*

*5.# The assessment proceeding in your case is proposed to be conducted through email based communication. The email provided in the said return of income shall be used for communication for this purpose. In case you wish to communicate through any other alternate email, the same may kindly be informed. A brief note regarding benefits of this facility and procedure is enclosed overleaf. In case you do not wish to participate in this tax payer friendly initiative, you may convey your refusal to the undersigned by the above mentioned date. In case, you wish to opt out from this scheme at any subsequent stage due to any technical difficulties faced by you, the same can be done with prior intimation to the undersigned.*

*(#) applicable only in case of taxpayers whose income-tax jurisdiction falls in the cities of Ahmedabad, Bengaluru, Chennai, Delhi Hyderabad, Kolkata or Mumbai."*

5. The Assessing Officer while framing the assessment under section 143(3) of the Act has not made any addition on the above two points rather made additions on all together two new issues of interest on FDR treating the same as income from other sources amounting to ₹1,72,158/-. The assessee before CIT(A) also filed complete copy of CBDT Circular issued vide instruction No. 20/2015 {F.No. 225/269/250-ita-(ii)} under section 143(3) of the Income Tax Act. The relevant circular read as under: -

*"Subject: 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 assessee concerned have duly been intimated about their cases falling either in 'Limited Scrutiny' or 'Complete Scrutiny' through notices issued under section 143(2) of the Income-tax Act, 1961 ('Act'). The procedure for handling 'Limited Scrutiny' cases shall be as under:*

*a. 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. But the CIT(A) after considering the arguments and submissions of the assessee rejected this ground noting that this ground do not have any merits by observing in Para 3.13 which read as under: -

*"3.13 I have considered the submissions and contentions made in this regard carefully. The appellant has contended that the Assessing Officer should have confined the assessment to the two issues of MAT and verification of Unsecured Loans, as per the Limited Scrutiny notice under section 143(2) as generated through the system. Since, he has gone beyond that, the assessment order needs to be quashed and annulled. I have considered the entire factual and legal matrix in this contention. I find that apparently there are no legal restrictions per se in the provisions of section 143(2), limiting the powers of the Assessing Officer as indicated by the appellant, which might have attracted the harshest action of*



*annulling the assessment order itself. At least, the appellant has not pointed out any such legal provisions in this regard curtailing the powers of the Assessing Officer. Nevertheless, without prejudice to the same, it is hastily added here that as per the Board's Instruction no 20, dated 29.12.15 itself, a limited scrutiny case can be converted in to complete scrutiny case, (which obviously seems to be the case here), with the previous approval of the concerned Pr. CIT / CIT. The appellant has not given any iota of evidence to suggest that such approval has not been obtained by the AO before expanding the scope of assessment. Given this situation, no fault seems to lie with the assessment order. In fact, given the fact that such a mechanism has been provided in the impugned instruction itself for converting a limited scrutiny case in to a complete scrutiny case, it seems like this is none of the concern of the appellant challenging the assessment by relying upon this instruction, as the requisite locus-standi of the appellant in this connection, is missing. Keeping in view the above, these grounds do not have any merits. Accordingly, they are being dismissed."*



Aggrieved, now assessee is in appeal before us.

7. The learned Counsel for the assessee Shri. Chetan Karia reiterated the same argument has made before CIT(A) and stated that once the Central Board Of Direct Taxes issued circular under section 119 of the Act which is binding on the jurisdictional assessing authorities in view of the decision of Hon'ble Supreme Court in the case of UCO Bank Vs. CIT (1999) 237 ITR 889 (SC). He also pointed out the case law of Hon'ble Calcutta High Court in the case of Amal Kumar Ghosh Vs. ACIT (2014) 361 ITR 0458, wherein Hon'ble Calcutta High Court has considered exactly the very same issue and held that the Circular issued by CBDT under section 119 of the Act is binding on the Revenue authorities. Further, he relied on the Hon'ble Andhra Pradesh High Court in the case of CIT Vs. Smt. Nayana P. Dedhia (2004) 270 ITR 0572 (AP), wherein Hon'ble Andhra Pradesh High Court has also considered the similar circular wherein the issue of limited scrutiny converted into a complete scrutiny by the Assessing Officer, which was held as invalid and ab initio void. On the other hand, the learned Sr. DR Akhtar Ansari, only relied on the order of CIT(A) but he could not controvert the argument made by the learned Counsel for the assessee.

8. We have heard the rival contentions and gone through the facts and circumstances of the case. Admitted facts are that the notice under section 143(2) of the Act Notice No. ITBA/AST/S/143(2)/2016-17/1000395286(1) dated 20.09.2016 clearly spell out the reasons for scrutiny assessment selection



are that (i) Minimum Alternate Tax liability mismatch (ii) unsecured loans, whereas as per the assessment order only scrutiny has taken place for the purpose of making assessment of interest income received from FDR amounting to ₹ 1,72,158/- as income from other sources. It is a case of converting a limited scrutiny into a complete scrutiny. Now, we have gone through the above referred CBDT Circular, whereby guidelines were issued for selection of limited scrutiny and complete scrutiny. The guidelines clearly states the conditions of converting a limited scrutiny into a complete scrutiny which is given in Para 3(d) of the Circular, wherein it is clearly mentioned that in case assessment proceedings of limited scrutiny case if it comes to the notice of the Assessing Officer there is potential escapement of income exceeding ₹5 lacs for cities other than metros but the condition of the metro is upto ₹10 lacs requiring substantial verification on any other issue then the case may be taken up for complete scrutiny assessment but with the prior approval of PCIT or CIT concerned. Further, condition mentioned in this circular is that such approval shall be accorded by the PCIT/ CIT in writing after being satisfied about the merits of the issue necessitating complete scrutiny in that particular case. When these fact was pointed to the learned Sr. Departmental Representative, he could not state any of the approval accorded by the CIT or PCIT in writing or there is no satisfaction of CIT/ PCIT recorded in this case. Even otherwise, the escapement pointed out in the assessment order is limited to interest of fixed deposit amounting to ₹1,72,158/- whereas, the circular put a limit of

₹10 lacs, this being a case of Metro city like Bombay. None of the above conditions are met by the Assessing Officer for converting limited scrutiny into a complete scrutiny. Now, the question arises whether the Circular is binding on the Revenue authorities or not. The same question has been answered by the Hon'ble Supreme Court in the case of UCO Bank (supra), wherein it is held as under: -

*"12. We do not see any inconsistency or contradiction between the circular so issued and section 145. In fact, the circular clarifies the way in which these amounts are to be treated under the accounting practice followed by the lender. The circular, therefore, cannot be treated as contrary to section 145 or illegal in any form. It is meant for a uniform administration of law by all the income-tax authorities in a specific situation and, therefore, validly issued under section 119. As such, the circular would be binding on the department.*

*The other judgment on which reliance was placed by the department was a judgment of a Bench of two Judges of this Court in Kerala Financial Corpn. v. CIT [1994] 210 ITR 129/75 Taxman 573, where this court, following the majority view in State Bank of Travancore's case (supra) held that interest*

*which has accrued on a 'stricky' advance has to be treated as income of the assessee and taxable as such. It is said that ultimately, if the advance takes the shape of a bad debt, refund of the tax paid on the interest would become due and the same can be claimed by the assessee in accordance with law. For reasons set out above, we are not in agreement with the said judgment. The relevant circulars of the Board cannot be ignored. The question is not whether a circular can override or detract from the provisions of the Act; the question is whether the circular seeks to mitigate the rigour of a particular section for the benefit of the assessee in certain specified circumstances. So long as such a circular is in force, it would be binding on the departmental authorities in view of the provisions of section 119 to ensure a uniform and proper administration and application of the Act.”*

9. Further, this issue is squarely covered exactly on identical issues of conversion of limited scrutiny into a complete scrutiny by the decision of Hon'ble Andhra Pradesh High court in the case of Smt. Nayana P. Dedhia (supra) and Calcutta High court in the case of Amal Kumar Ghosh (supra).



10. In view of the above discussion and legal position, we hold that the AO has travelled beyond his jurisdiction for converting limited scrutiny case into complete scrutiny case. Hence, we quash the assessment order as well as the order of Commissioner of Income Tax (Appeals). The appeal of the assessee is allowed on jurisdictional issue.

**11. In the Result, the appeal of the assessee is allowed.**

Order pronounced in the open court on 17.06.2020.

Sd/-

(मंजूनाथ जी/ MANJUNATHA G)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 17.06.2020

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai