IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "F": NEW DELHI]

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
<u>A N D</u>
SHRI AMIT SHUKLA, JUDICIAL MEMBER
(Through Video Conferencing)

ITA. No. 472/Del/2021
(Assessment Years : 2015-16)

Smt. Rukmani Devi, 165, South Civil Lines, Court Road, Muzaffar Nagar – 251 001, Uttar Pradesh. **PAN: ABUPD4206E**	Vs.	Pr. CIT, Dehradun. Uttarakhand.

<u>A N D</u>

ITA. No. 474/Del/2021
(Assessment Years:2015-16)

Smt. Prabha Rani, 52/3, Meeka Vihar, Jansath Road, Muzaffar Nagar – 251 001, Uttar Pradesh. **PAN: ABRPR5325F**	Vs.	Pr. CIT, Dehradun. Uttarakhand.
(Appellants)		(Respondents)

Assessee by :	Shri Ankit Gupta, Advocate;
Department by:	Shri T. Kipgen [CIT] – D.R.;
Date of Hearing :	03/03/2022
Date of pronouncement :	03/03/2022

<u>O R D E R</u>

<u>PER AMIT SHUKLA, JM :</u>

1. The aforesaid appeals have been field by the assessees against separate impugned orders of even date 21.03.2121 passed by the ld. Pr. Commissioner of Income Tax (hereinafter referred to as PCIT) in

his jurisdiction under Section 263 of the Income Tax Act, 1961 (the Act) for assessment year 2015-16.

2. In both the cases the issues involved are common and are arising out of similar set of facts, therefore, same were heard together and are being disposed of, for the sake of convenience, by this consolidated order.

3. We are taking up the case of Smt. Rukmani Devi ITA. No. 472 (Del) of 2121 as a lead case. For the sake of ready reference the grounds raised by the assessee in the case of Smt. Rukmani Devi, are reproduced hereunder:-

> "1. That the notice issued under Section 263 of the Income Tax Act, 1961 and the order passed by the Pr. CIT under said Section are illegal, bad in law and without jurisdiction.
>
> 2. That the Pr. CIT has failed to appreciate, that, the assessment order passed under Section 143 (3) by the Assessing Officer is neither erroneous nor prejudicial to the interest of Revenue and as such the order passed by the Pr. CIT order under Section 263 in set aside the assessment order and given a direction of passing, it fresh is illegal, bad in law and without jurisdiction.
>
> 3. That the notice by the Pr. CIT under Section 263 does not show that the Assessing Officer committed any error in passing the assessment order under Section 143 (3). Therefore, the jurisdiction assumed by the Pr. CIT under Section 263 is illegal and without jurisdiction and is liable to be quashed.
>
> 4. That the Pr. CIT has failed to appreciate that the Return of the assessee has been picked up for limited scrutiny for the verification of the Agriculture Income shown by the assessee appellant, which the assessing officer has examined, therefore, the Pr. CIT exercise, the jurisdiction U/s 263 on an issue, for which the assessment was not picked up for scrutiny, hence, the notice issued and order passed by the Pr. CIT is beyond the jurisdiction of section 263, in view of the instruction no.5/2016 dated 14.07.2016 issued by the Ld. CBDT.

5. That, the Pr. CIT has failed to appreciate, that, the provision of section 50C is not applicable on the Capital Gain shown by the assessee appellant, as the Capital Gain offered by the assessee appellant by considering the value of section 50C of the ACT, therefore, the allegation of Pr. CIT, that, the assessment order passed by the assessing officer is erroneous and prejudicial to the interest of revenue is highly arbitrary and against the facts of the case.

6. That the Pr. CIT has failed to appreciate, that, the assessee appellant has filed all the details related to Long Term Capital Gain, in her Return of Income at the time of the assessment proceedings, thereafter, the assessing officer has taken a view, that, there is no requirement of conversion of limited scrutiny to complete scrutiny, which is self shows, that, the Assessing Officer has taken the view after considering all the aspects. Moreover, the view taken by the Assessing Officer is a possible view. Hence, the Pr. CIT has erred in law and on facts in setting aside the assessment to be redone afresh.

7. That the observations of the Pr. CIT are based on surmises and conjectures and on the basis of the different view taken by the Assessing officer after framing the Assessment Order Section 143(3) and do not afford any legal justification to the findings given.

8. That the proceeding under Section 263 are initiated at the instance of Assessing officer and the order passed by the Pr. CIT is clearly without application of mind as it refer to many irrelevant issues hence the order under section 263 is liable to be quashed.

9. That the CIT have erred in not providing proper and adequate opportunity to Appellant to place the material on record and the impugned order passed is against the principle of natural of justice.

10. That all the facts and circumstances of the case and the material available on record have not been properly considered by the CIT while passing the order under Section 263. The impugned order is illegal, arbitrary and bad in law. "

4. The facts in brief are that assessee had filed return of income on 31.08.2015 declaring income of Rs.53,13,440/- and agricultural income of Rs.22,92,493/-. Similarly in the case of Smt. Prabha Rani,

return of income was filed on 31.08.2015 declaring total income of Rs.30,40,640/- and income from other sources and agricultural income at Rs.25,36,993/- was filed. Both the cases were selected for limited scrutiny under CASS on account of **"large agricultural income"**. The ld. Assessing Officer accordingly issued notices under Section 143(2) of the Act on the issue flagged under CASS and examined "large agricultural income" and also raised query from time to time on this point. In response the assessee had filed entire details of the agricultural holdings and agricultural income earned by the assessee. After examining in detail, Assessing Officer has added an amount of Rs.15,00,000/- in the case of Smt. Rukmani Devi and Rs.20,00,000/- in the case of Smt. Prabha Devi, as income from undisclosed sources after disallowing major portion of agricultural income shown by the assessee.

5. Now the ld. Pr. CIT in both the cases in his revisionary jurisdiction has noted entirely a different issue beyond the scope and mandate of limited scrutiny that assessee had sold land, which is evident from the following observation in his show-cause notice:-

> "2. On *examination of the case record, it was revealed that during the year the assessee had sold land at Shahbuddinpur, Muzaffarnagar in the form of plots. The assessee was 1/4th partner in this transaction. According to the information furnished by the assessee during the course of assessment proceedings, as per circle rate, the value of sale consideration was Rs.3,10,34,862/- and cost of acquisition was Rs.1,99,020/-. Therefore, LTCG comes to Rs. 3,08,35,842/- and assessee's share being 1/4th partner would be Rs. 77,08,960/-. However, in computing the capital gains, the assessee had taken sale consideration as per agreement at Rs.2,15,02,600/- and thereby calculated her share in capital gains at Rs.53,25,894/-. Thus, in her computation, the assessee has shown capital gain of Rs.*

51,46,446/- whereas as per the provisions of section 50C of the I.T. Act, 1961, LTCG comes to Rs.77,08,960/-. As such, the assessee has shown less capital gain of Rs.25,62,514/- (Rs. 77,08,960 - Rs.51,46,446) in contravention of the provisions of the section 50C of the I.T. Act, 1961.

3. In view of the above facts and circumstances, the assessment order under Section 143(3) of the Income Tax Act, 1961 dated 12.12.2017 passed by the Assessing Officer in the case for the assessment year 2015-16 was found to be erroneous and also prejudicial to the interest of Revenue."

6. Before the Pr. CIT assessee objected that the notice issued under Section 263 of the Act on the ground that, it is without jurisdiction as the same is beyond the scope of limited scrutiny and, therefore, same is bad in law. Apart from that, detailed submissions are made on the merits of the case also. However, the ld. Pr. CIT had rejected the contention, after observing as under :-

5.1 The replies submitted by the assessee have been duly considered. In this regard, it is noticed that though the case was selected for limited scrutiny, as per the directions contained In the CBDT, New Delhi instruction No. 20/2015 dated 29.12.2015 regarding scrutiny cases selected through CASS and conversion of Limited Scrutiny cases into Complete Scrutiny cases para 3(d) and the partial modification in the Instructions vide No. 5/2016 dated 14.07.2016, the case was liable to the converted into Complete Scrutiny as per laid down procedures and the AO should have sought approval from the Pr. CIT in writing to convert the case from Limited Scrutiny to Complete Scrutiny. Relevant para of instructions is reproduced below:

3d. 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 Pr. CIT / CIT in writing after being satisfied about merits of the issue(s) necessitating 'Complete Scrutiny' in that particular case.

It is evident that since there was potential escapement of income in this case which exceeded the prescribed limit, the Assessing Officer should have moved proposal to convert the case into complete scrutiny as per the above Instructions dated 29.12.2015 and 14.07.2016, as above and a complete verification should have been conducted in the case on the above discussed.

5.2 As regards the challenge to the assumption of jurisdiction by the undersigned u/s the Act is not maintainable as the presumptions of the assessee are not based upon any empirical observations. The view taken by the undersigned is based upon an independent perception of the assessment record. It is apparent that the order of the AO is not only erroneous but also prejudicial to the revenue. It is further clarified that with regard to normal objection that is raised with regard to the difference of opinion between the Assessing Officer and the Commissioner of Income Tax, the position of law stands substantially altered with the insertion of Explanation 2 in section 263, by the Finance Act, 2015. As the deeming provision in that section has also been specifically invoked, the decisions pertaining to the pre-amended provisions of section 263, would no longer hold good. "

7. Accordingly, he set aside the assessment order for verification with regard to application under Section 50C of the Act. Similar finding has been given in the case of Smt. Prabha Rani also.

8. Before us, the ld. Counsel submitted that the ld. PCIT could not have enlarged the scope of limited scrutiny because the Assessing Officer as per C.B.D.T. instructions was mandatorily bound to follow the guidelines of limited scrutiny and was require to examine only that issue which is selected under CASS. Beyond that, he cannot enlarge the scope. In support, he referred to the C.B.D.T. instructions No. 20 dated 29.12.2015 and partial modification Instructions vide No. 5 dated 2016, which has also been noted by the ld. Pr. CIT. Thus, holding the assessment order to be erroneous on entirely different grounds is incorrect. The ld. Pr. CIT should not have set aside the assessment order, which was beyond the mandate.

9. On the other hand, the ld. [CIT] – DR submitted that though the case was selected for limited scrutiny, however, the Assessing Officer should have moved a proposal to convert the case into complete scrutiny in case it was found that there was escapement of income. Here in this case the assessee had sold the property and long term capital gain has been accepted by the Assessing Officer without any scrutiny or verification that provisions of Section 50C of the Act are applicable. He thus strongly relied upon the order of the Ld. PCIT.

10. We have heard the rival submissions and also perused the material placed on record. Now here in the case of the assessee, return of income was selected for scrutiny only for limited purpose of examining "**large agricultural income".** The case was selected under CASS and accordingly notice under Section 143(2) of the Act was

issued on 19.02.2016, to examine the said issue. The Assessing Officer had carried out a detailed inquiry and examination of this issue and has made major disallowance on account of agricultural income shown by the assessee in both the cases. Now the ld. Pr. CIT has held the assessment order to be erroneous and prejudicial to the interest of Revenue on entirely different issue altogether, which was beyond the mandate of limited scrutiny, i.e., the assessee had shown the value of sale consideration and consequently long term capital gain without taking into cognizance of Section 50C of the Act. When the assessee had challenged the notice of the ld. Pr. CIT (as noted above0, he has observed that Assessing Officer should have sought approval from the Pr. CIT in writing to convert the case from incomplete scrutiny to full scrutiny.

11. Such an observation and opinion of the Ld. Pr. CIT defeats the entire purpose of C.B.D.T. Instruction wherein clear mandate was given to the field officer that the scrutiny proceedings had to be restricted on the point raised for the limited scrutiny selected under the CASS. It is only when the Assessing Officer had found potential escapement, then he can seek approval or Pr. CIT or CIT to convert it into complete scrutiny in a particular case. The Pr. CIT cannot hold the assessment order to be erroneous only for the reason that Assessing Officer should have converted the particular assessment selected for limited scrutiny into complete scrutiny. If this view of the Pr. CIT is upheld, then every assessment order would be subject to cancellation or review under revisionary jurisdiction because there could be many such items of income, which could be the case of potential scrutiny. It is not a case here where the Assessing Officer on the issue, which was selected for limited scrutiny under CASS, had not examined the issue properly or has not carried out any enquiry. If

the Assessing Officer would not have carried proper enquiry or examination of the issue flagged for a limited scrutiny, then definitely the ld. Pr. CIT on examination of records can hold that assessment order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue after detailed reasoning and finding. If under the limited Scrutiny there was no mandate to the Assessing Officer, then the ld. Pr. CIT cannot hold that Assessing Officer should have converted the limited scrutiny into complete scrutiny. We are unable to subscribe to the contention raised by the Ld. DR or the view taken by the ld. Pr. CIT that Assessing Officer should have sent proposal for converting the limited scrutiny to complete scrutiny. It tantamount to sit on the judgement of the Assessing Officer what he should have done further for examining potential escapement of income. What could be a potential escapement of income will always be a subject matter of opinion and perception which can vary from person to person, wherever the assessments have been framed and completed under the strict norms of limited scrutiny. Apart from that, seeking approval and getting approval is two different situations, as approval may be granted and can be rejected also. Any higher authorities, like CIT or Pr. CIT can subsequently raise any point based on his opinion and perception that Assessing Officer should have examined the potential escapement of income and expect him to transgress beyond the scope and mandate given in the limited scrutiny cases especially flagged by CASS. This could lead to a situation where almost all the assessment orders passed under limited scrutiny would be subject to revision under Section 263 of the Act on innumerable counts. Accordingly, we quash such a finding given in the order of the Pr. CIT whereby instead of finding any error in the assessment order passed by the Assessing Officer on the issue on which Assessing Officer was

required to frame the assessment, the Pr. CIT cannot travel beyond the limited scrutiny mandate and rope in a different issue altogether holding that Assessing Officer should have converted the limited scrutiny to complete scrutiny.

12. There is another fallacy in such situation, as the time limit for selecting the case for scrutiny is circumscribe by the notice as permitted under Section 143(2) of the Act and so is the limitation of passing of the assessment order. If the Assessing Officer has not sought any approval for converting the case of limited scrutiny to complete scrutiny, then the ld. Pr. CIT after expiry of limitation cannot grant post facto approval which can only be sought by the Assessing Officer during the limitation of passing of the assessment order and not after the limitation for passing of the assessment order has expired. The Assessing Officer has to seek an approval for converting the complete scrutiny within the limitation period of passing of the assessment order. Once assessment order had been passed, the stage of seeking approval also expires and the ld. Pr. CIT cannot grant any post-dated approval that to be in his revisionary jurisdiction under Section 263 of the Act. Once the limitation of passing order has expired so is the process of seeking approval, which cannot be granted afterwards. The assessment order if at all for the sake of argument is accepted that it is erroneous as Assessing Officer has not converted limited scrutiny to complete scrutiny, but then, limitation of seeking approval by the Assessing Officer cannot be extended beyond limitation of passing the assessment order and any such seeking of approval cannot be done or granted post limitation. Thus, on this count also the order of the Pr. CIT is unsustainable in law and accordingly, in both the years the impugned order passed by the ld. Pr. CIT is quashed.

13. In the result, both the appeals filed by assessees are allowed.

Order pronounced in the open court on : **03/03/2022.**

Sd/- **(ANIL CHATURVEDI)** **ACCOUNTANT MEMBER**	**Sd/-** **(AMIT SHUKLA)** **JUDICIAL MEMBER**

Dated : 03/03/2022.

MEHTA

Copy forwarded to

1. Appellants;
2. Respondents;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	03.03.2022
Date on which the typed draft is placed before the dictating member	03.03.2022
Date on which the typed draft is placed before the other member	03.03.2022
Date on which the approved draft comes to the Sr. PS/ PS	03.03.2022
Date on which the fair order is placed before the dictating member for pronouncement	03.03.2022
Date on which the fair order comes back to the Sr. PS/ PS	03.03.2022
Date on which the final order is uploaded on the website of ITAT	03.03.2022
date on which the file goes to the Bench Clerk	03.03.2022
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	