

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.3293/Del/2019

[Assessment Year : 2014-15]

Amit Seth, C-1/16, Daryaganj, New Delhi-110002. PAN-AAXPS1385F	vs	ITO, Ward-61(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri R.M.Mehta, Adv	
Respondent by	Shri Om Prakash, Sr.DR	
Date of Hearing	26.05.2022	
Date of Pronouncement	26.07.2022	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2014-15 is directed against the order of Ld. CIT(A)-20, New Delhi dated 18.02.2019.

2. The assessee has raised following grounds of appeal:-

1. *“That the CIT(Appeals) has erred both on facts and in law in upholding the action of the AO in treating a sum of Rs.35,09,000/- as “Income from Other Sources” as against the stand of the assessee that the same was in the nature of “agricultural income” within the meaning of Section 2(1A) r.w.s.10(1) of the Income Tax Act 1961 (the “Act” in short) and therefore not liable to tax.*
2. *That the CIT(Appeals) in coming to the erroneous conclusion that she did, gave a complete gobye to the evidence placed on record, the written submissions filed as also the judgements cited in support thereof, preferring to proceed on assumptions and presumptions.*
3. *That the CIT(A) erred in upholding the charge of interest u/s 234A, 234B and 234C of the Act.*

4. *That the appellant reserves to itself, the right to add, alter, amend, substitute and/or withdraw any Ground(s) of Appeal on or before the date of hearing.”*
3. During the course of hearing, the assessee also filed an additional ground of appeal that reads as under:-
 1. *“Without prejudice to Addl Ground No. 1, the AO erred in law in changing the head of income in a limited scrutiny assessment from “agricultural income” to “income from other sources” and again to “income from undisclosed sources” without putting the appellant on notice in the statutory notices issued or otherwise, during the course of the proceedings.”*

FACTS OF THE CASE

4. Facts giving rise to the present appeal are that the assessee filed return of income declaring income at Rs.6,30,110/-. The case of the assessee was selected for limited scrutiny under CASS on the basis of large agricultural income. Thereafter, the AO issued statutory notices to the assessee for framing the assessment u/s 143(3) of the Income Tax Act, 1961 (“the Act”). Thereby, the AO treated the agricultural income claimed by the assessee at Rs.35,10,000/- as income from undisclosed sources.
5. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, dismissed the appeal and sustained the addition made by the AO.
6. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

7. Ld. Counsel for the assessee submitted that admittedly, the case was selected for limited scrutiny and the AO did not confine to the issue for which scrutiny was undertaken and enlarge the scope of changing the head of income without taking necessary approval from the Competent Authority. In this regard, Ld. Counsel for the assessee has placed reliance on the decision of Division Bench of the Tribunal rendered in the case of *Shri Narendra Kumar Rameshbhai Patel vs DCIT in ITA No.981/Ahd./2019* pertaining to AY 2015-16 order dated 20.03.2020.

8. On the contrary, Ld. Sr. DR has opposed these submissions and also filed written submissions. The written submissions of the Ld. Sr. DR are reproduced as under:-

“On Additional Grounds taken by the AR: *At the outset it is submitted that additional grounds taken are not born out of the impugned order and thus the same should not be admitted in the present appeal.*

Further, as submitted in the above paras there is no case for the additional grounds that a limited scrutiny case was converted into a complete scrutiny and subsequently changed the head of income. Admittedly the case was selected for limited scrutiny and whatever queries were raised during the course of the assessment proceedings were only for the purpose of the verifying that claim/issue. Since there was no deviation on the part of the AO from the core issue and therefore there was need and requirement of approval for converting the case into a complete scrutiny. As a result of verifications and inquiries conducted by the AO, when the claim of the assessee regarding the exempt agricultural income was not found genuine, it resulted in the form of disallowance of that exemption and taxing the alleged receipt under the head income from other sources. Any exempt income/agricultural income not found genuine is

always liable to be treated as income from other sources and there is no infirmity in the assessment order on that count.

In view of the above this appeal is devoid of merits on legal and factual grounds as well. In the distinctive facts of the case, case relied upon by the Ld. AR are also not applicable. The appeal is, therefore, liable to be dismissed.”

9. I have heard the contentions of Ld. Authorized representatives of the parties and perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the case was selected for limited scrutiny and while framing the assessment, the AO made addition treating the agricultural income as income from other sources and after computation the income, it is taken as income from undisclosed sources. It is also not disputed that there is no approval for carrying out full scrutiny of the case before the Competent Authority. The Division Bench of the Tribunal in the case of *Shri Narendra Kumar Rameshbhai Patel vs DCIT* (supra) held as under:-

17. *“We are also not convinced with the argument of the learned DR that the issue raised by the AO is limited to the activity of the sale of the property only. It is because if we admit the contention of the learned DR then the head of income from capital gain will also get change to the business income despite the fact that there was no question raised in the notice issued for the limited scrutiny under section 143(2) of the Act. The right course of action for the AO was to take the approval from the competent authority for expanding the scope of Limited Scrutiny to the regular assessment but he failed to do so. Thus, in our considered view inaction of the AO should not cause any harassment to the assessee.*

18. *In holding so we draw support and guidance from the order of the Hon'ble Chandigarh Tribunal in case of Rajesh Jain vs. ITO reported in 162 taxman 212 where it was held as under:*

The jurisdiction of the Assessing Officer in such cases where the notices are issued for limited scrutiny is confined to the claims he has set out in the notice for verification. This position of law was further elaborated by the CBDT in its Circular No. 8/2002, dated 27-8-2002.

The CBDT Circular clarifies that the Assessing Officer does not have the powers to make the entire assessment of income in limited scrutiny cases. Now question had to be decided when the Assessing Officer does not have the powers while making limited scrutiny assessment to decide such issues which are not covered by the limited scrutiny notice, the Commissioner (Appeals) on appeal against limited scrutiny assessment can exercise the powers in excess of the power vested with the Assessing Officer. There is no doubt that the power of the Commissioner (Appeals) is co-terminus with the power of the Assessing Officer. So, however, in the instant case, when the Assessing Officer did not have the power to make a full-fledged assessment in limited scrutiny cases, the Commissioner (Appeals)'s power could not be enlarged beyond the power of the Assessing Officer in limited scrutiny cases. So, it was considered appropriate to remit the issue relating to allowance of depreciation in respect of the plinth to the file of the Assessing Officer for the purpose of fresh decision in accordance with law. Since the notice under section 143(2)(i) was issued for limited scrutiny, the Assessing Officer was precluded from considering any other issue while making the assessment under section 143(3) under limited scrutiny. The decision of the Commissioner (Appeals) in considering the other claim of the assessee not covered in the notice issued under section 143(2)(i) for limited scrutiny was contrary to the provisions of the Act and, accordingly, was set aside.

In view of the above and after considering the facts in totality as discussed above, we are not convinced with the finding of the authorities below. As such the entire issue should have been limited to the extent of the dispute raised in the notice under section 143(2) of the Act for the limited scrutiny but the AO in the present case has exceeded his jurisdiction as discussed above. Thus the ground of appeal of the assessee is allowed.

19. As the assessee is succeeded on the technical issue raised by him, we refrain ourselves from adjudicating the other issues raised on merit. Accordingly, the issues raised by the assessee on merit become infructuous. Hence we dismiss the same as infructuous.”

10. Undisputedly, in the present case as well while assessing the income, the AO changed head of income without obtaining prior approval from Competent Authority in terms of CBDT Circular. In view of the above binding precedent, the AO exceeded his jurisdiction. The contention of Ld. Sr. DR that the AO did not deviate from core issue is of no significance looking to the mandate of law. The AO was required to take prior approval from the Competent Authority. Therefore, respectfully following the decision of the Division Bench of the Tribunal rendered in the case of *Shri Narendra Kumar Rameshbhai Patel vs DCIT* (supra), I hold that assessment so framed is bad in law hence, the addition so made cannot be sustained. Hence, the AO is hereby directed to delete the addition. Thus, the additional ground raised by the assessee is allowed.

11. Since I have allowed the additional ground raised by the assessee and deleted the impugned addition, other grounds raised by the assessee need no separate adjudication hence, dismissed.

12. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 26th July, 2022.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI