

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.3585/Del/2019
Assessment Year: 2015 -16

Kamal Kumar Sethi 41, Uday Park, August Kranti Marg, New Delhi-110049 PAN No.AABPS2925H (APPELLANT)	Vs	ACIT Circle – 61 (1) New Delhi (RESPONDENT)
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Appellant	Sh. Siddharth Arora, CA
Respondent	Sh. M. Baranwal, CIT (DR)

Date of hearing:	30/08/2022
Date of Pronouncement:	01/09/2022

ORDER

PER N.K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-20, New Delhi dated 29.03.2019 pertaining to A.Y. 2015-16.

2. The grievance of the assessee read as under :-

1. *The Ld/- CIT(A) has erred in law and facts of the case in making enhancement of income of Rs. 26,52,433/- under section 36(1)(iii) of the Act, alleging that interest expenses incurred on borrowed funds is not incidental to the profession of the appellant, leading to enhancement of income under the new source of income, which is arbitrary, unjustified, uncalled for and outside the scope of powers of the Ld/- CIT(A).*
2. *The Ld/- CIT(A) has erred in law and facts of the case in making the addition to the income of the appellant under section 36(1)(iii) of the Act on merits of the case which is unjustified, uncalled for and bad in law.*
3. *The Ld/- CIT(A) has erred in law and facts of the case in initiating the penalty proceedings under section 271(1)(c) of the Act on the addition made under section 36(1)(iii) of the Act alleging furnishing of inaccurate particulars, which is highly unjustified, uncalled for and bad in law.*
4. *The appellant craves the right to add, amend or modify any ground of appeal.*

3 Representatives of both the sides were heard at length. Case records carefully perused.

4. Briefly stated the facts of the case are that assessee filed return of income on 23.09.2015 declaring total income of Rs.19454270/-. The return was selected for scrutiny assessment for limited scrutiny the reasons for selecting the return for limited scrutiny in CASS is as under :-

Questionnaire Annexed with Notice u/s. 142(1)

Please refer to assessment proceedings pending in your case for A.Y. 2015-16. Your case has been selected for Limited scrutiny in CASS. The reasons for selection are: -

- Large increase in Sundry Creditors with respect to Turnover as compared to preceding year.
- Tax credit claimed in ITR is less than tax credit available in 26AS.
- Mismatch in sales turnover reported in Audit Report and ITR.
- High interest expenses relatable to exempt income (u/s 14A).

In this regard, you are requested to submit/ produce the following details before the undersigned on the date of hearing. If you attend the office of undersigned through Authorized Representative (AR), kindly submit Power of Attorney duly authorizing AR.

1. Copy of ITRs, Income and Expenditure Account, Balance Sheet, Computation of Income Sheet and Tax Audit Report with annexure(s) for the A.Y. 2015-16.
2. A note on the professional activity/ services carried out and method of accounting followed during the year under consideration.
3. List of all residential and office address/es including branches.
4. Furnish a copy of latest assessment order passed U/s. 143(3)/147/153A/153C, if any in your case. Further explain as to how the facts of current year are different from that year. Further give a note if the said order was challenged before CIT(A)/ITAT and also as to whether the demand raised has been paid or not.
5. Details of all bank accounts including bank accounts outside India.
6. Please explain the CASS reasons as mentioned above, with all the relevant documents.

You are required to furnish written para-wise reply on the above points and produce all the supporting documents in support of the declaration made in the return of income on the date of hearing.

Yours sincerely,

Shatarupa Mishra
(Shatarupa Mishra)
Assistant Commissioner of Income Tax
Circle-61(1), New Delhi
Asstt. Commissioner of Income Tax
Circle-61(1), E-2 Block,
Pratyaksh Kar Bhawan,
Civic Centre, New Delhi-110002

5. It can be seen from the reasons that the return was selected for limited scrutiny to consider higher interest expenses relatable to the exempt income u/s. 14A of the Act. The CIT(A) at para 6.1.3 of order has held as under :-

6.1.3 I have perused the order of the Assessing Officer and the submissions of the appellant. The appellant submitted before the Assessing Officer also that the dividend of Rs. 21,490/- were received by him from different pharmaceutical companies and not on the shares of Delhi Heart and Lungs Institute where he had invested the borrowed money. The appellant during appeal hearing submitted the dates of receiving such dividends from five pharmaceutical companies totaling to Rs. 21,490/-. The issue of investment in shares out of borrowed funds is dealt by me in the subsequent paras of this order. The Assessing Officer is therefore directed to delete the addition of Rs. 32,46,871/- made by her u/s 14A of the Act.

6. After deleting the impugned disallowance made by the AO u/s. 14A of the Act the CIT(A) proceeded as under :-

6.1.4 From the order of the Assessing Officer, from the submission of the appellant before the Assessing Officer which the Assessing Officer had reproduced in her assessment order and from the submissions made by the appellant during appeal hearing it is evident that the appellant had taken loan from PNB in F.Y. 2009-10 to invest in shares of the hospital M/s. Delhi Hearth and

KAMAL KUMAR SETHI

Lungs Institute. The appellant had been debiting interest paid by him on this loan by which he has purchased shares to his income and expenditure a/c claiming the interest expenses u/s 36(1)(iii) of the Act. The Assessing Officer had while computing disallowance u/s 14A of the Act taken this amount of Rs. 2652433/- into consideration under Rule 8D (2)(i). In my order earlier I have taken a decision that this amount will not be within the purview of Sec. 14A of the Act. But from the perusal of the assessment order and the submissions made by the appellant as discussed above I intend to take a view that the amount is also not allowable u/s 36(1)(iii) of the Act, as it is not incidental expenditure to the profession of the appellant. The appellant is a renowned cardiologist and for the F.Y. 2014-15, he has shown gross income from 'consultancy and professional receipts' amounting to Rs. 19040989/- and from 'honorarium' Rs. 563271/-. Against this income the appellant had debited expenditure incurred by him under various heads in his income and expenditure account. The same includes interest charges of Rs. 2652433/- which the appellant had paid to Punjab National Bank against the loan taken by him to purchase shares of M/s. Delhi Heart and Lungs Institute. The appellant has also shown in his balance sheet certain other investments made by him in some other companies. The appellant was issued a notice on 18.03.2019 u/s 251(1) r.w.s. 251(2) of the Act regarding the proposal to disallow the interest paid to Punjab National Bank amounting to Rs. 2652433/- in the income expenditure account of the appellant and to enhance the income of the appellant by the above amount as the amount of Rs. 2652433/- is not part of the professional expenditure of the appellant.

7. Before us the Counsel for the assessee drew our attention to the decision of the coordinate Bench and pointed out that on identical set of facts the coordinate bench has held that in case of limited scrutiny the AO cannot exceed latitude of limited scrutiny unless he follows the CBDT instruction No.5/2016 dated 14.07.2016.

8. Per contra the DR strongly supported the order of the CIT(A) and pointed out that the point raised by the Counsel is not coming out of the grounds taken before the Tribunal.

9. We have carefully considered the orders of the authorities below. There is no dispute that the return was selected for limited scrutiny as per the reasons given elsewhere. It is incorrect to say that the point raised by the Counsel is not coming out of the grounds taken before us in as much as ground No.1 mentioned elsewhere challenges the enhancement made by the CIT(A) which is beyond this scope of limited scrutiny.

10. We find that the coordinate Bench in the case of Arjun Transport Company Pvt. Ltd. in ITA No.4984/Mum/2019 order dated 02.07.2021 under similar set of facts has held as under :-

9. In cases selected under 'limited scrutiny', the Assessing Officer cannot exceed the latitude of limited scrutiny unless the scope of scrutiny is expanded or the case is converted from 'limited scrutiny' to 'complete scrutiny' with the approval of authority, as specified by the CBDT in Instructions No.5 of 2016 dated 14/7/2016. The said Instructions in an explicit manner states that in assessment proceedings the Assessing officer shall confine his enquiries/investigations etc. only to the issue selected under 'Limited Scrutiny'. It is only after conversion of case to complete scrutiny by following the due procedure, the Assessing Officer can travel beyond the scope of limited scrutiny. The same restrictions apply to the CIT(A) in respect of cases falling under 'limited scrutiny category'. If the CIT(A) is allowed to make addition on any issue not covered under limited scrutiny, the very purpose of selecting the case under 'limited scrutiny category' will be defeated. In the present case, no document has been furnished by the Department/respondent to show that 'limited security' was converted to 'complete scrutiny'. Ergo, the CIT(A) overstepped his jurisdiction in invoking the provisions of section 36(1)(iii) of the Act for making disallowance in First Appellate proceedings in a case selected for 'limited scrutiny' to examine disallowance of interest expenditure u/s 14A of the Act.

10. In the case of Amit Kumar Dey vs. DCIT in ITA No. 5526/Del/2018 for AY 2015-16 decided on 30/3/2021, the case was selected for limited scrutiny, the Assessing Officer completed the assessment by making enquiries etc. only on the issue covered by limited scrutiny, in First Appellate proceedings the CIT(A) made addition/adjustment on issue other than covered by limited scrutiny and at no point of time limited scrutiny was converted into complete scrutiny, the Division Bench of Tribunal after referring to CBDT Instructions (supra) held as under:

"10. Now we come to the issue of the enhancement made by the CIT (Appeals). Firstly, on perusal of the above facts, we hold that when the case of the assessee was selected for limited scrutiny, the Id. CIT (Appeals) can make enhancement only with the aspect of issues that were part of the limited scrutiny. Otherwise, it may happen that the Id. Assessing Officer may pass an order on the issues related to limited

scrutiny and the Id. CIT (Appeals) may enhance the income of the assessee on issues other than limited scrutiny issues. This will amount to bypassing the above quoted instructions of the CBDT. It also shows that if that happens then without obtaining the approval of Commissioner of Income Tax and CCIT, the whole assessment of the assessee remains open, despite the fact that the learned assessing officer has looked into the issues contained in the limited scrutiny notice. We do not find such an intention of the CBDT in issuing the instructions of limited scrutiny case. On this score, we do not approve the enhancement made by the Id. CIT (Appeals) on issues, which were not part of limited scrutiny."

Thus, from the above decision it is evident that the CIT(A) in the case of limited scrutiny assessments cannot travel beyond the issue, selected under 'limited scrutiny'.

11. The argument of Revenue is that the CIT(A) has not enhanced assessment on a new source. The disallowance of interest expenditure was subject matter of dispute at assessment stage albite under section 14A of the Act. Reference was made to the decisions rendered in the case of HDFC Bank Ltd. (supra) to draw parity between Section 14A and Section 36(1)(iii) of the Act, for disallowance of interest expenditure. The Id. DR placed reliance on the case of HDFC Bank Ltd. wherein disallowance of interest expenditure u/s. 14A r.w.r. 8D(ii) was deleted by applying the same principle as was laid down in the case of Reliance Utilities & power Ltd. (supra) for deleting disallowance of interest expenditure u/s. 36(1)(iii) of the Act.

I have given a thoughtful consideration to the analogy drawn by the Id. DR to support the impugned order. In my considered view, the argument made by Id. DR is not sustainable. The Hon'ble High Court has not drawn any parity between the two sections. The only principle that has been borrowed from the case of Reliance Utilities & power Ltd. and applied in the case of HDFC Bank Ltd. is that where the assessee is having mixed bag of funds comprising of interest bearing funds and own interest free funds and where own funds and other non-interest bearing funds were more than the investment in the tax-free securities, the presumption would be that

the investments made by the Assessee would be out of the interest-free funds available with the Assessee. Apart from above principle, there is nothing common in section 14A and section 36(1)(iii) of the Act. Both these sections operate in different situations and circumstances. These sections cannot be interchangeable applied or are substitute for each other. Therefore, the analogy drawn by the Id. DR is untenable, hence, rejected. The other case laws relied by the Id. DR are distinguishable on facts and hence, does not support the cause of Revenue.

12. Taking into consideration the facts of the case and the decisions discussed above, I find that the CIT(A) has travelled beyond his jurisdiction to make disallowance on an issue not covered by 'limited scrutiny'. Thus, the impugned order is liable to be set aside. I hold and direct, accordingly. The assessee succeeds on ground No.2 of the appeal.

11. On finding parity of facts respectfully following the decision of the Coordinate Bench we direct the AO to delete the impugned disallowance. The appeal of the assessee is accordingly allowed.

12. Order announced in the open court on 01.09.2022.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

NEHA, Sr. Private Secretary

Date:- 01.09.2022

Copy forwarded to:

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

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
 ITAT NEW DELHI

Date of dictation	30.08.2022
Date on which the typed draft is placed before the dictating Member	31.08.2022
Date on which the typed draft is placed before the Other member	01.09.2022
Date on which the approved draft comes to the Sr.PS/PS	01.09.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	01.09.2022
Date on which the fair order comes back to the Sr. PS/ PS	01.09.2022
Date on which the final order is uploaded on the website of ITAT	01.09.2022
Date on which the file goes to the Bench Clerk	01.09.2022
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	