

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

**BEFORE SHRI G.S. PANNU, PRESIDENT AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

**ITA No.376/Del/2021
Assessment Year: 2016-17**

Danone Asia Pte Limited, 1 Walich Street, Guoco Tower \$ 18-01, Singapore, Singapore, 078881	Vs.	ACIT, Int Tax-1 (2)(2), New Delhi.
PAN :AAFCD8967M		
(Appellant)		(Respondent)

Assessee by	Shri Himansu Sinha, Adv. & Vibhu Gupta, CA
Respondent by	Ms. Anupama Singla, Sr. DR

Date of hearing	31.08.2022
Date of pronouncement	29.11.2022

ORDER

PER SAKTIJIT DEY, JUDICIAL MEMBER:

Captioned appeal has been filed by the assessee against the order dated 04.02.2021 of learned Commissioner of Income-Tax (Appeals)-42, Delhi for the assessment year 2016-17.

2. In addition to the grounds raised in the Memorandum of Appeal, vide letter dated 25.02.2022, assessee raised the following additional ground and sought admission of the said ground in terms of Rule 11 of Income-Tax(Appellate Tribunal) Rules, 1963:

“That under the facts and circumstances of the case, the Ld. A.O erred in examining on issue which was beyond the scope of limited scrutiny initiated vide notice dated 31.08.2017, rendering the assessment proceedings null, void and without jurisdiction.”

3. The learned Departmental Representative strongly objected to the admission of the additional grounds.

4. Having considered rival submissions on the issue of admission of additional ground, we are of the view that the issue raised in the additional ground is purely a legal and jurisdictional issue going to the root of the matter. Since, the additional ground raised will have a crucial bearing on the outcome of the appeal and can be decided without making fresh investigation into facts, in our considered opinion, the additional ground deserves to be admitted for adjudication. In this context, we refer to the following observations of the Hon'ble jurisdictional High Court in case of PCIT vs. Silver Lines (2016) 65 taxmann.com 137:

“16. As regards the objection of the Revenue to the ITAT permitting the Assessee to raise the point concerning non-issuance of notice under Section 143(2) of the Act for the first time in the appeal before the ITAT, the Court is of the considered view that in view of the settled legal position that the requirement of issuance of such notice is a jurisdictional one, it does go to the root of the matter as far as the validity of the reassessment proceedings under Section 147/148 of the Act is concerned. It raises a question of law as far as the present cases are concerned since it is not in dispute that prior to finalization of the reassessment orders, notice under Section 143(2) of the Act was not issued by the AO to the Assessee. With there being no fresh evidence or disputed facts sought to be brought on record, and the issue being purely one of law, the ITAT was not in error in permitting the Assessee to raise such a point before it. This finds support in the decision of the Supreme Court in National Thermal Power Co. Ltd. (supra) and the decision of this Court in Gedore Tools (P) Ltd. (supra).”

5. As could be seen from the additional ground, the issue arising for consideration is whether the assessing officer could have enlarged the scope of limited scrutiny for which the assessment in assessee's case was selected.

6. Briefly, the facts are that the assessee is a non-resident corporate entity incorporated in Singapore and is a tax resident of Singapore. As observed by the assessing officer, the assessee is engaged in the business of procurement of goods and services for various affiliates of Danone group, infant nutrition, medical nutrition etc. As observed by

the assessing officer, assessee's case for the impugned assessment was selected for limited scrutiny under CAAS parameters to evaluate/verify the following:

“1. Whether value of international transactions in respect of mutual agreement or arrangement have been correctly shown in Form 3CEB.”

7. In course of assessment proceedings, the assessing officer while verifying the audit report furnished by the assessee in Form 3CEB noticed that in the year under consideration, the assessee had entered into various international transactions with its associated enterprises in India and received revenue's as under:

Description of such mutual agreement/arrangement	Received/receivable	Amount in INR
Provision of IT Support Services	Received/receivable	14,74,210
Provision of Training Services	Received/receivable	16,20,992
Cost allocation of information technology support charges.	Received/receivable	3,70,005
Cost allocation of information technology support charges	Received/receivable	45,94,474

8. Since the assessee had entered into international transaction with associated enterprises, the assessing officer made a reference to the transfer pricing officer (TPO) to examine arm's length nature of such transactions and vide order dated 24.07.2019, the TPO accepted the value of transactions, hence, no adjustment adverse to the interest of the assessee was proposed by the TPO. Pursuant to the order of the TPO, the assessing officer accepted assessee's claim that transactions at sl. nos. 1, 3 and 4 of the table above, are not taxable in India. However, in relation to transaction at item no. 2, being provision of training services, the assessing officer was of the view that the training charges of Rs.16,20,992 received by the assessee, being in the nature of Fee for Technical Services (FTS) is taxable in India. While coming to such conclusion, the assessing officer observed that the fee for training services will also come within the ambit of FTS as defined under Article 12 of the India-Singapore Double Taxation Avoidance Agreement (DTAA).

9. In this context, the assessing officer observed that assessee had changed his position as earlier the assessee stated that these revenues were actual reimbursement for IT support services, whereas,

afterwards the assessee stated that these are for recovery of training program cost. Be that as it may, the assessing officer added back the amount of Rs.16,20,992 at the hands of the assessee by treating it as FTS. While deciding the issue in appeal, learned Commissioner (Appeals) upheld the decision of the assessing officer.

10. Before us, learned counsel appearing for the assessee submitted that the scope of limited scrutiny was to verify, whether the value of international transactions with the AE have been correctly shown in Form 3 CEB. He submitted, the matter was referred to the TPO, who after verification has accepted the value of international transactions. He submitted, the Assessing Officer proceeded beyond the scope of limited scrutiny by changing the nature of a particular receipt as FTS. He submitted, this is beyond the jurisdiction of the assessing officer as it is in violation of Instruction nos. 20/2015 and 5/2016 issued by Central Board of Direct Taxes (CBDT).

11. Drawing our attention to the instructions of CBDT, learned counsel submitted that the instructions clearly provide that the questionnaire under Section 142(1) of the Act in limited scrutiny cases must remain confined only to the specific reasons/issues for which

case has been picked up for scrutiny. He submitted, the instructions further provide that in case the assessing officer notices any potential escapement of income exceeding a certain threshold limit, which requires substantial verification of any other issue, the case can be converted to complete scrutiny with the approval of the concerned PCIT/CIT. Further, he submitted, the instructions make it clear that the assessing officer while seeking conversion of limited scrutiny to complete scrutiny shall require to form a reasonable view that there is possibility of under assessment of income. Therefore, only after conversion of limited scrutiny to complete scrutiny, the assessing officer can examine the additional issues besides the issue involved in limited scrutiny. Further, referring to letter dated 30th November, 2017 issued by DGIT(Vigilance), he submitted that the letter made it clear that the assessing officer should abide by the instructions of the CBDT while completing limited scrutiny assessment and should be scrupulous about maintenance of note sheets in assessment folders. He submitted, by giving a complete go by to the CBDT instructions/Circular, the assessing officer has travelled beyond the scope of limited scrutiny. Thus, he submitted, the assessment order

has to be declared as invalid. In support of such contention, he relied upon the following decisions:

- i) Shri Kabirdass Vs. ITO – ITA No.395/Gau/2019 – order dated 26.06.2020;
- ii) Urban Improvement Co. (P) Ltd. vs. ITO – ITA No.7496/Del/2019 – order dated 07.02.2020;
- iii) Shri Amit Kumar Dey vs. DCIT – ITA No.5526/Del/2018 – order dated 30.03.2021; &
- iv) Smt. Manju Kaushik vs. DCIT – ITA No.1419/JP/2019 – order dated 09.12.2019.

12. Learned Departmental Representative submitted, the Assessing Officer has not gone beyond the scope of limited scrutiny. Referring to the observations of the assessing officer and learned Commissioner (Appeals), she submitted, inspite of repeated requests of the assessing officer, the assessee did not furnish the requisite agreement/documentation to enable the assessing officer to verify the nature and character of the transaction. She submitted, the assessing officer was only discharging his duty in terms of the limited scrutiny while calling for the necessary documents to ascertain the nature of transaction. She submitted, in absence of proper explanation from the assessee to demonstrate that the revenue received from provisions of

training services is not in the nature of FTS, the Assessing Officer was justified in taxing the income at the hands of the assessee. Without prejudice, she submitted, the assessee cannot avail the defense of violation of limited scrutiny by the assessing officer, as, any such violation has to be dealt with departmentally. Thus, she submitted, the additional ground raised should be dismissed.

13. We have considered rival submissions in the light of decisions relied upon and perused the material on record.

14. Undisputedly, assessee's case was selected for limited scrutiny to examine whether value of international transactions in respect of mutual agreement or arrangement have been correctly shown in Form 3CEB. In other words, the scrutiny was only for the purpose of verifying whether the international transactions with the related parties have been correctly declared by the assessee in the audit report. It is a fact on record that the assessing officer noticing that assessee has entered into international transactions with AE had made a reference to the TPO to evaluate the arm's length nature of such transactions in the context of assessee's claim that the revenue received in respect of such transactions are not taxable in India.

15. Undisputedly, the TPO after examining the transactions as reported in Form 3CEB, passed an order accepting the value of the transactions. Thus, the order of the TPO demonstrates that the assessee had correctly reported the international transactions with the AE in Form 3CEB. In fact, out of the four transactions reported by the assessee, the assessing officer has accepted three and only made a deviation in respect of one transaction relating to provision of training services generating revenue of Rs.16,20,992. The Assessing Officer has treated it as FTS both under domestic law as well as India – Singapore DTAA. The question arising for consideration is, whether the Assessing Officer could have expanded the scope of the limited scrutiny to traversed into a completely different arena of examining whether an item of revenue received by the assessee falls in the category of FTS. Once, the international transactions reported in Form 3CEB have been verified by the TPO and no adjustments were suggested, it has to be accepted that assessee has reported the transactions correctly. Therefore, then, the purpose of limited scrutiny gets sub-served and the matter should have ended there. However, the Assessing Officer exceeding his jurisdiction has ventured into

recharacterizing the nature and character of a particular item of income, which in our view, is beyond the scope of limited scrutiny. This is so because, in terms of CBDT Instruction nos. 20/2015 and 5/2016 read with DGIT(Vigilance) letter dated 30th November, 2017 before venturing into other issues outside the scope of limited scrutiny, the Assessing Officer should have taken prior approval of PCIT/CIT.

16. Admittedly, in the facts of the present appeal, the assessing officer has not taken any such approval of the concerned authorities. Therefore, the assessment order passed is in violation of CBDT Instructions, referred to above. Therefore, the question which arises for consideration is, what will be the fate of such an order passed in violation of the extant CBDT Instructions/circulars.

17. We find the answer to the aforesaid question in the decisions cited before us by learned counsel for the assessee. As per the ratio laid down by the co-ordinate Benches in these decisions, violation of norms of limited scrutiny in terms with the CBDT instructions and conversion to complete scrutiny without seeking prior approval would render the assessment order not only without jurisdiction but a nullity

in the eyes of law. This is so because, as per section 119 of the Act CBDT instructions/circulars are binding on Assessing Officer. That being the legal position enunciated in the decisions cited before us, the impugned assessment order has to be declared as wholly without jurisdiction, hence, null and void. That being the case, the assessment order deserves to be quashed. Accordingly, we do so. Consequently, the impugned order of learned Commissioner (Appeals) is hereby set aside. Since, while deciding the additional ground raised by the assessee, we have quashed the assessment order, the other grounds raised by the assessee having become infructuous, do not require adjudication at this stage.

18. However, the parties are at liberty to contest the issues raised in these grounds, if, they arise in any other proceeding in future.

19. In the result, the appeal is allowed, as indicated above.

Order pronounced in the open court on 29th November, 2022.

Sd/-
(G.S. PANNU)
PRESIDENT

Dated:29th November, 2022.
Mohan Lal

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER