

आयकर अपीलीय अधिकरण, कटक न्यायापीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

श्री जार्ज माथन, न्यायिक सदस्य एवं श्री अरुण खोड़पिया लेखा सदस्य के समक्ष ।

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

AND

SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.91/CTK/2022

(निर्धारण वर्ष / Assessment Year :2017-2018)

SIKSHA 'O' ANUSANDHAN Plot No.224, Dharma Vihar, Khandagiri, Bhubaneswar	Vs	CIT(Exemption), Hyderabad
PAN No. :AABTS 1525 R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri K.K.Bal, Advocate
राजस्व की ओर से /Revenue by	:	Shri M.K.Gautam, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	19/12/2022
घोषणा की तारीख/Date of Pronouncement	:	19/12/2022

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order of the Id CIT(E), Hyderabad dated 29.03.2021 passed in DIN & Letter No.ITBA/REV/F/REV5/2021-22/1041946780(1) for the assessment year 2017-2018, on the following grounds :-

- 1. For that the order of the forum below is arbitrary, illegal and without jurisdiction both in fact and law, hence liable to be quashed.*
- 2. For that Ld. CIT erred in exercising jurisdiction u/s 263 of the IT Act treating the assessment erroneous and prejudicial to the interest of revenue on the issues which are not subject matter of assessment. Therefore the order dated 29/03/2022 passed u/s 263 of the IT Act is without jurisdiction and liable to be quashed and set aside.*
- 3. For that Ld. Pr. CIT erred in passing the order by setting aside the assessment without appreciation of the submission of the assessee, without appreciating the details furnished and also without stating why the submission is not acceptable. Therefore the order u/s 263 is an unreasoned order and liable to be quashed.*

4. *For that Ld. Pr. CIT erred passing an order u/s 263 of the IT Act without rejecting the documents furnished or recording it to be irrelevant or lacking their probative worth. Therefore the order u/s 263 is not valid and liable to be set aside.*
 5. *For that Ld. A.O erred in not appreciating the evidences available on record and evidence furnished in course of 263 proceeding. Therefore the present order passed without appreciating the materials evidences available on record is perverse and liable to be quashed.*
 6. *For that Ld. A.O erred in setting aside the assessment order without stating the manner in which the order of A.O is erroneous and prejudicial to the interest of revenue and what is the basis of such conclusion. Therefore the order u/s 263 an unreasoned order and is not sustainable and liable to be quashed.*
 7. *For that the order of CIT is contrary to CBDT instruction No-20/2015 dated 29thDec 2015 and CBDT directive in F. No-225/402/2018/ITA.II, which is violation of provisions of law. Therefore the order passed u/s 263 of the IT Act, violating provisions of law is not sustainable and liable to be quashed.*
 8. *For that the assessee craves the leave for any addition, alteration or modification of the grounds either before or at the time of hearing of the appeal.*
2. Brief facts of the case are that the assessee is a trust registered u/s.12A of the Act and deriving income from imparting education and research works to students in different fields and promotion of Arts & Culture. It has filed its return of income on 28.09.2017 declaring total income at Rs.Nil and claimed exemption u/s.11 of the Act. The case of the assessee was selected for limited scrutiny through CASS and scrutiny assessment for the year under consideration u/s.143(3) of the Act was completed on 25.07.2019 accepting the returned income and erroneously raising a demand of Rs.5,89,75,865/- due to levying of interest u/s.234C of the Act at Rs.6,92,09,850/- in ITBA. As there was a mistake apparent

from the record, the case of the assessee thereafter rectified u/s.154 of the Act and refund of Rs.1,18,20,240/ was made on 04.06.2020.

3. Subsequently, the Id. Pr.CIT invoking his powers conferred u/s.263 of the Act, on verification of the assessment record, observed that the assessment order framed u/s.143(3) of the Act was erroneous and prejudicial to the interest of revenue. Therefore, the Pr.CIT issued a show cause notice u/s.263 of the Act issued on 25.01.2022 and thereafter the Pr.CIT set aside the assessment completed by the AO directing the AO for verification of the issues raised in the show cause notice.

4. Now, the assessee is in appeal before the Tribunal against revisionary order passed by the Id. Pr.CIT u/s.263 of the Act.

5. Ld. AR before us submitted that in the course of assessment, the assessee furnished the ledger copy of the compensation expenses. It was also submitted that this expenditure is not penal in nature it is paid to the employees who lost their life in a fire accident in the hospital premises of the trust. The entire payment has been made through bank. It was also submitted by the Id. AR that all the relevant copies substantiating the claim of the assessee were produced before both the authorities below. Further the Id. AR reiterated his submissions as were placed in the statement of facts filed along with the grounds of appeal before the Tribunal, which reads as under :-

1. That the Assessee is Trust and the main activities of the Trust are Running Hospital and Educational Institutions. The assessee trust is registered u/s 12AA of the Income tax Act. For the financial year 2016-17 relevant to the Assessment year 2017-18 the assessee filed its return of income and other statutory forms

electronically and claimed deductions and exemptions allowable under IT Act.

2. That the Assessee case was selected for limited scrutiny under CASS.

By issue of Notice u/s 143(2) the assessee was intimated about the issues identified for examination. The issues identified for examinations under limited scrutiny are as under.

1. Depreciation claim

11. Refund claim

111. Cash deposit during demonetization period.

3. That thereafter by issue of Notice u/s 142(1) Ld. Assessing officer called for evidences I information in connection with the issues identified for examination. In compliance to the said notice the assessee submitted relevant Books of accounts, documents/ evidences from time to time. After verification of the, Books of accounts, Bank statements, documents/evidences furnished, details of cash deposits made during demonetization period and explanations offered in course of assessment, Ld. Assessing officer being satisfied completed the assessment by accepting the return of income of the assessee.

4. That there after the CIT(exemption) Hyderabad called for the assessment record of the A/Y -2017-18 for examination and after examination found the order dated 25.07.2019 passed u/s 143(3) of the IT Act is erroneous and so far as prejudicial to the interest of revenue on the ground that Ld. Assessing officer has allowed the claim of deduction towards compensation expenses at Rs.10,01,00,000/-, Puja expenses at Rs.11,35,984/- and Holding tax expenses at Rs.25,00,000/- which are in his opinion not allowable.

5. That in limited scrutiny there is stipulation by CBDT that the Assessing officer can't travel beyond the issues for which the case was selected for scrutiny and also can not expand the scope of enquiry/investigation beyond the issues on which the case was flagged for examination. The idea behind such a stipulation is to enforce check and balances upon powers of the A.O to do fishing and roving enquiry. Since the issues like claim of deduction towards compensation, interest on TDS, Puja expenses and payment of Holding tax were not issues identified for examination in Limited scrutiny and there is a stipulation that the A.O can't travel beyond the issues for which the case was selected scrutiny the assessment order framed u/s 143(3) without verifying the present issues can never be erroneous for exercising jurisdiction u/s 263 of the IT Act. Therefore the initiation of proceeding u/s 263 is not only contrary to the administration instruction issued by CBDT but also violation of provisions law.'

6. That although the administrative instruction provides restriction that an Assessing officer shall not expand the scope of enquiry/investigation beyond the issues flagged for limited scrutiny, the Assessing officer by examining all the Books of accounts like:

- i. Copies of Bank statement
- ii. Computation of income
- iii. Complete set of Audit report and enclosures
- iv. All Individual ledgers of Income and expenditure Account
- v. Details of Amount paid to specified persons
- vi. Copies of certificate of registrations
- vii. Copies of the trust deed & Bye-law

has verified all these issues in course of assessment. It is evident from the Notice issued u/s 142(1) of the IT Act as well as from the assessment order itself. Copies of the Notice u/s 142(1) and assessment order u/s143(2) furnished before Ld. CIT for verification.

7. That it is also the settled principles of law that jurisdiction u/s 263 can't be exercised on issues which are not subject matter of consideration while passing assessment order u/s 143(3) of the IT Act. Since the present issues were not subject matter of consideration and there is a stipulation on the A.O that he can't travel beyond the issues for which the case was selected for scrutiny, either by not verifying or after verification of these issues not mentioning in the assessment order no error is committed by the A.O to treat the assessment erroneous. Therefore under these facts and circumstances the present assessment can never be erroneous for exercising jurisdiction u/s 263 of the IT Act.

8. That there are two conditions precedent to be satisfied prior to exercise of jurisdiction u/s 263 of the IT Act i. e the assessment must be erroneous and it must be prejudicial to the interest of revenue. The conditions are composite and can't be segregated. Out of these two conditions one the cause and the other one is its effect. Therefore the order prejudicial to the interest of revenue shall be read in conjunction with an erroneous order and not in isolation. The show cause notice has been issued without stating therein how the order is erroneous and without satisfying the one of the conditions precedent of exercising jurisdiction u/s 263 of the IT Act. Therefore the present proceeding is not sustainable.

9. That in course of assessment the assessee furnished the ledger copy of the compensation expenses. This expenditure is not penal in nature it is paid to the Patients who lost their life in a fire accident in the Hospital premises of the Trust. The entire payment has been made through Bank. Copies of the relevant pages of the Bank account and the details of the patients were furnished before CIT for verification.

10. That payment of TDS is a statutory due. If it is not paid in time the deductor is liable to pay interest thereon. The interest liability for the delay in payment of TDS is compensatory in nature. It is the settled principles of law that interest paid on statutory dues is an allowable expenditure since these are compensatory in nature. Since interest is paid 'on delay of TDS is a payment against compensation and not an infraction of law. Therefore it is an allowable expenditure and Ld. assessing officer is just and proper in allowing the interest paid on TDS as expenditure. Copies of the challans evidencing such payment were furnished before Ld. CIT(Exemption) for verification.

10. That the assessee trust runs Hospital, many educational institutions. Puja expenses are incurred for carrying on the day to day activities in hospital and educational institutions. This expenditure is made in business exigencies. In order to determine Business expenditure the test of commercial expediency would be adjudicated from the point of view of the Business man and not from the point of view of revenue. Ld. Assessing officer Considering number of educational institutions, Hospitals functioning under the Trust, Number pujas carried on different occasions, Business exigencies and the turn over of the Assessee trust allowed the expenditure claimed under the head Puja expenses. Further in comparison to the turnover of the assessee the expenses in terms of puja expenses is only 0.03 percent of the turnover and it is very negligible. Ld. Assessing officer taking into consideration the nature of activities carried on by the assessee, exigencies of puja expenses for such activities and evidences furnished in support of the expenditure allowed the claim. While allowing the claim of the assessee in the opinion of Assessing officer it was just and proper.

11. That the assessee runs its hospital and educational institutions within the territorial jurisdiction of Bhubaneswar Municipal corporation. The Buildings in which all the activities are carried on spread over an area of 2050820 Sqft. and on the basis of the assessment of Bhubaneswar Municipal corporation, the assessee has paid the Holding tax. The holding tax is a statutory due and it has been paid on the basis of the assessment made by a statutory body. Further the payment has been made through Bank against valid receipts issued by Bhubaneswar Municipal corporation. The in support of such expenditure the assessee furnished the evidences before Ld. assessing officer and after taking into consideration the details furnished Ld. Assessing officer allowed the claim of the assessee. Copies of the Municipal tax receipts and relevant page of Bank account were furnished before CIT (Exemption) for verification.

12. That Ld. assessing officer framed the assessment order u/s 143(3) of the IT Act after verification of the issues identified for examination and no objection/irregularities have been raised in the proceeding initiated by issue of show cause notice on the issues identified for examination in the limited assessment. The issues on

which objection have been raised are not the subject matter of assessment and also not within the scope of limited scrutiny assessment. Therefore the limited scrutiny assessment completed u/s 143(3) can never be erroneous and prejudicial to the interest of revenue for exercising jurisdiction u/ s 263 of the IT Act.

13. That in compliance to the show cause notice issued for exercise of jurisdiction the Assesse submitted that since the issues raised in the show cause notice were not subject matter of scrutiny and A.O can't travel beyond the issues flagged for verification, non verification of the said issues can never make the assessment erroneous. Further the assesse Furnished evidences in support of the said claims before Ld. CIT for verification. But Ld. CIT without appreciating the submission made and details furnished set aside the assessment by exercising jurisdiction u/ s 263 of the IT Act to re do assessment. Therefore the order dated 29.03.2022 passed u/s 263 of IT Act is perverse and liable to be quashed and set aside.

14. That prior to exercise of jurisdiction two conditions precedent that the assessment is erroneous and so far as prejudicial to the interest of revenue has to be satisfied. One of the two conditions is cause and the other one is its effect. Therefore both the conditions must be read co-jointly. If the cause is there and the effect is not jurisdiction u/s 263 can't be exercised and vice versa. In the present case there is neither the existed of the cause nor the effect for exercise of jurisdiction u/s 263 of the IT Act. Therefore the present order is without jurisdiction and liable to be quashed and set aside.

6. Apart from the above, Id. AR further submitted that the issue involved in the present appeal of the assessee has already been settled by this Bench of the Tribunal in the case of M/s Shark Mines & Minerals Pvt. Ltd., passed in ITA No.128/CTK/2019, order dated 18.08.2022, wherein the Tribunal in para 10 has held that, once such fetters are placed on the AO in respect of limited scrutiny, the AO is barred from looking into any other issues other than those issues which are the subject matter in the limited scrutiny. Accordingly, Id. AR submitted that the order passed by the Id. Pr.CIT deserves to be quashed.

7. On the other hand, Id. CIT-DR relied on the order of the Id. Pr.CIT and submitted that the AO should have converted the limited assessment in this case to a complete scrutiny assessment by taking

approval/permission from the Pr.CIT/DIT concerned. This inaction on the part of the AO has made the assessment order erroneous and prejudicial to the interest of revenue. Further the Id. CIT-DR has filed his written submissions which reads as under :-

This is an assessee's appeal against the order of CIT(Exemptions), Hyderabad u/s.263 of the Act. The gist of the assessee's arguments is that the case was selected under limited scrutiny. The issues raised under limited scrutiny were verified by the A.O. But subsequently the CIT (Exemptions) has passed revision order on the issues which were not the part of limited scrutiny.

i.) It was held by the Hon'ble Cochin Tribunal in the case of Baby Memorial Hospital Ltd. vs. ACIT (111 taxmann.com 189) that even in a case of limited scrutiny assessment, the Assessing Officer is duty bound to make a prima facie enquiry as to whether there is any other item which requires examination and in assessment, potential escapement of income thereof exceeded Rs. 10 lakhs. In the cited case, the AR of the assessee had argued that this was a limited scrutiny assessment and the reasons for which the case was selected for scrutiny for furnishing of details specific to the CASS reasons. It was submitted that the details were furnished in response to notice issued under section 142(1), dated 27-6-2016 and after verification the Asstt. Commissioner had accepted the explanation given by the assessee, so proper enquiry was made in the limited scrutiny case and, therefore, the Assessing Officer had applied his mind to the facts of the case and, therefore, his order was not erroneous or prejudicial to the interest of the revenue. Reliance was also placed on the Sanjeev Kr. Khemka vs. Pr.CIT (1361 of 2016, dated 02-06-2017) ITAT Kolkata Bench, Rakesh Kumar vs. CIT (IT Appeal 6187 of 2015, dated 20-12-2018) ITAT New Delhi Bench, Mrs. Sonali Hemant Bhavsar vs. Pr.CIT (IT Appeal 742/Mum/2019 dated 17-05-2019) ITAT Mumbai Bench. However this contention of the assessee was rejected by the Hon'ble Tribunal by holding as under:

"7. We have heard the rival submissions and perused the record and also gone through all the case laws cited by the parties. Section 263 of the Income-tax Act seeks to remove the prejudice caused to the revenue by the erroneous order passed by the Assessing Officer. It empowers the Commissioner to initiate suo moto proceedings either where the Assessing Officer takes a wrong decision without considering the materials available on record or he takes a decision without making an enquiry into the matters, where such inquiry was prima facie warranted. The Commissioner is well within his powers to treat an order as erroneous on the ground that the Assessing Officer should have made further inquiries before accepting the wrong claims made by the assessee. The Assessing

Officer cannot remain passive in the face of a claim, which calls for further enquiry to know the genuineness of it. In other words, he must carry out investigation where the facts of the case so require and also decide the matter judiciously on the basis of materials collected by him as also those produced by the assessee before him. The Assessing Officer was statutorily required to make the assessment under Section 143(3) after scrutiny and not in a summary manner as contemplated by Sub-section (1) of Section 143. The Assessing Officer is therefore, required to act fairly while accepting or rejecting the claim of the assessee in cases of scrutiny assessments. The Assessing Officer should protect the interests of the revenue and to see that no one dodged the revenue and escaped without paying the legitimate tax. The Assessing Officer is not expected to put blinkers on his eyes and mechanically accept what the assessee claims before him. It is his duty to ascertain the truth of the facts stated and the genuineness of the claims made in the return. The order passed by the Assessing Officer becomes erroneous when an enquiry has not been made before accepting the genuineness of the claim which resulted in loss of revenue.

7.1 In the present case, the first issue for our consideration is whether the Assessing Officer having failed to convert limited scrutiny into a complete scrutiny, the assessment order would be rendered erroneous and prejudicial to the interests of the Revenue.

7.2 The Pr. (IT invoked the provisions of section 263 of the Act for considering the following two issues:

"The assessee had claimed an amount of Rs. 2,08,09,140/- being foreign exchange loss was allowed in assessment The foreign exchange loss on account of foreign currency loan taken for the construction of new and additional equipment. The loss was recognized translating the liabilities at exchange rate in effect at the balance sheet date. The loss on devaluation of rupees on account of loan utilized for fixed capital not deductible u/s, 37(1) of the Act, since the expenditure is capital in nature . Assessee debited an amount of Rs. 15,83,130/- in its P&L account towards provision for doubtful debts. This being provision for diminution in value of trade receivables in the balance sheet, had to be added to profit for computation of book profit. This has resulted in short assessment of income under MAT."

7.3 On the above two issues, the Pr. (IT observed as follows:

"The issue is that the AO has not considered or had applied his mind to the facts of the case and with relation to the provision of the Act in respect of the above issues. Therefore, the assessment for the AY 2014- 15 is hereby set aside for the limited purpose of verifying whether the foreign exchange loss qualifies for being a revenue expenditure and secondly to rework MAT income after adding back the provision for doubtful debts, as necessary

examination/verification has not been made during the assessment."

7.4 In this case, the assessment was based on limited scrutiny with reference to AR information and no addition was made by the Assessing Officer on that count. In our opinion, even in a case of limited scrutiny assessment, the Assessing Officer is duty bound to make a prima facie enquiry as to whether there is any other item which requires examination and in the assessment, the potential escapement of income thereof exceeded Rs.10 lakhs. He ought to have sought the permission of CIT /DIT to convert the 'limited scrutiny assessment' into a 'complete scrutiny assessment'. If there is no escapement of income, which would have been more than Rs.10 lakhs, the Pr. CIT could not exercise jurisdiction u/s, 263 of the LT. Act. In the present case, the assessee itself agreed that the Pr. CIT is justified in giving direction to rework MAT income after adding back the provision for doubtful debts. Now, the argument of the Ld. AR that in case of limited scrutiny assessment, the Pr. CIT could not exercise jurisdiction u/s, 263 of the Act, is devoid of merit. Accordingly, the ground relating to challenging of the exercise of jurisdiction by the Pr. CIT u/s, 263 is rejected".

ii.) The Hon'ble Cuttack IT AT in the case of Sushant Kumar Chaudhry in ITA No.226/CTK/2019 has decided the issue in favour of the Revenue by holding in para-I I as under:

11. In our opinion, the contention of Id. AR regarding revisionary power exercised by the Pr.CIT in case of limited scrutiny, is not accepted on the basis of recent decision of the coordinate bench of the Tribunal in case of Baby Memorial Hospital Ltd. (supra). If there is an escapement of income or potentiality of income involved in the issues which has not been done by the AO while completing the limited scrutiny assessment the AO could have obtained the permission from the Id. Pr.CIT if he finds that there is a potentiality of the income. The case law relied on by the Id. DR is for the assessment year 2014-2015 and the assessee's case is also for the assessment year 2014-2015, therefore, the case is squarely covered by decision of the of coordinate bench of the Tribunal in case of Baby Memorial Hospital Ltd. (supra).

14. From the reading of all the above cited decisions, it is evident that the view taken in above decisions are unanimous that the Income-tax Officer is not only an adjudicator but also an investigator. It is his duty to ascertain the truth of the facts stated in the return. When the circumstances of the case are such so as to provoke an enquiry, it is his duty to make proper enquiry. First he should investigate the matters on the basis of which the assessee has prepared income tax return thereafter he should reach to a logical conclusion that the income shown is as per the Income Tax Act. Failure to make enquiry in such circumstances would make the assessment order erroneous and prejudicial to the interest of the revenue. We concur with the submissions of Ld. CIT-DR that it was

a case of lack of inquiry and there was no application of mind by AO on the issues which formed subject matter of revisional jurisdiction u/s 263. Therefore, we do not find any illegality in the action of Ld. Pr. CIT in exercising the said jurisdiction. In the totality of facts and circumstances of the case, the case is squarely covered by the decision in the case of Baby Memorial Hospital Ltd. (supra) and in the case of Maa Tarini Industries Ltd. (supra). The Id. AR has referred to two decisions of the coordinate bench of the Tribunal in the case of Mrs. Sonali Hemant Bhavsar, ITA No.742/M/2019 and in the case of Sanjeev Kumar Khemka, 1361/Kol/2016. These two decisions have already been referred by the coordinate bench of the Tribunal in the case of Baby Memorial Hospital Ltd. (supra). Further the Id. AR has relied on the decision of Hon'ble Supreme Court in the case of Kiran Singh & Ors. [1995] 1 SCR 117 (SC). In the peculiar facts and circumstances of the present case, the case laws cited by the Id.AR of the assessee are not applicable.

15. From the provisions of Section 263 of the Act, it is clear that any order passed by the AO, the Pr.CIT/CIT can invoke his revisionary power, if he considers that the order passed by the AO is erroneous and prejudicial to the interest of Revenue within the Section 263 of the Act. The CBDT has issued circular regarding limited scrutiny in which there is no any whisper regarding revisionary powers that the Pr.CIT/CIT cannot exercise within the statutory limit as prescribed by the Income Tax Act, 1961. If the Pr.CIT/CIT cannot interfere with the limited scrutiny done by the AO, then there must be any clarification in the CBDT Circular in this regard, which is not found in the Circular. Considering the above case laws and factual aspects, we are of the view that the Id. Pr.CIT has rightly exercised his powers and we do not find any reason to interfere with the same. Accordingly, we dismiss the appeal of the assessee".

iii.) Reliance is also placed on the decision of Hon'ble Cuttack ITA T in the case of Maa Tarini Industries Ltd., ITA No.292/CTK/2019, dated 17.03.2020, wherein the issue of limited scrutiny was involved which is similar to the present case. The Hon'ble Cuttack ITAT held in paras-25,28, 29 to 32 as under:

"25. On careful consideration of the rival submissions, we are of the view that admittedly and undisputedly, from the copy of the notice by the AO u/s, 142(1) of the Act dated 13.1.2015, it is ample clear that the case of the assessee for assessment year 2014-15 was selected for Limited Scrutiny only on two issues i.e. higher turnover report in service tax return compared to ITR and mismatch in amount paid to related persons u/s.40A(2)(b) reported in audit report and ITR.

28. So far as sufficiency and adequacy of enquiry on the issues of 'Limited Scrutiny' are concerned, we observe that the AO issued notice u/s.143(2) and u/s.142(1) of the Act which were replied by the assessee and copies of these notices and replies have been placed on record at APB pages 42 to 113, which shows that the AO

makes some inquiry on the issues picked up by him by way of issuing notices and taking on record replies, explanation and relevant documents submitted by the assessee in compliance to the said notice. However, we are unable to find any deliberation in the assessment order regarding these issues which could show and satisfy us that the AO not only made sufficient and adequate enquiries on the issues for which the case was selected for limited scrutiny but also made deliberation by application of mind and thereafter adjudicated the issues by way of inserting deliberation in the assessment order.

29. Ld A.R. has placed into service CBDT Circular/instruction No.5/2016 dated 14.7.2016 regarding scope of enquiry in cases under "Limited Scrutiny" selected through CASS 2015 and 2016 but in the same instruction/circular, in paras 2 to 6, it has also been provided that in a case which was originally earmarked for ' Limited scrutiny', the AO shall be required to form a reasonable view that there is possibility of under assessment of income if the case is -not examined under 'Complete scrutiny' and the case may be converted from limited scrutiny to complete scrutiny, which requires administrative approval from pr. CIT/CIT/Pr. DIT/DIT, as prescribed in para 3(d) of earlier instruction dated 29.12.2015.

30. From a careful reading of the impugned order passed u/s.263 of the Act, we clearly observe that the assessee company had shown gross turnover /revenue from operation of Rs.63,97,71,157/- for financial year 2013-14 but as per statement in 26AS, the assessee had shown Rs.16,91,82,966/- from works contract bit it had disclosed its gross receipts in the profit and loss account only Rs.15,69,31,397/- resulting that the gross receipts is understated by Rs.1,22,51,569/- which should have been verified by the AO during scrutiny proceedings. The AO by way of notice u/s.142(1) initiated enquiry on this issue but after filing reply of the assessee in compliance to the said notice, the AO as an adjudicator and investigator did not bother to deliberate this issue in the assessment order and in our humble opinion, until and unless inquiry started by the AO is terminated to a logical and plausible end, such kind of enquiry has to be held as inadequate and insufficient inquiry on the issues, which makes the assessment order as erroneous and prejudicial to the interest of the revenue.

31. From the material placed before us, we also observe that from the service tax return of the assessee, the assessee had shown Rs. Rs.8,45,95,617/- as gross value of service provided under the head 00440262 (transport of goods by road) and a sum of Rs.15,69,31,397/- as gross value of service provided under the head 00440402 (service provided in relation to mining of minerals, oil or gas) as is revealed from service tax return. However, the assessee had not accounted for the receipt of Rs.8,45,95,617/- in its income. Moreover, this amount of Rs.8,45,95,617/- had been grouped in "note 19"under the head "cost of materials consumed".

Thus, the income credited to P&L account was understated to the tune of Rs. 16,91,91,234/- which were not enquired by the AO.

32. We also observe that the issue of brought forward unabsorbed depreciation of Rs. 1,34,85,465/- and MAT credit of Rs. 26,33,135/- was not under Limited Scrutiny, hence, the AO has not enquired into the matter while passing the assessment order. Although both the issues were not under limited scrutiny but from the spirit and mandate of section 263 of the Act, which provides revisional powers to Pr. CIT /CIT in the cases where the assessment order or any other proceedings under this Act, passed by the AO is erroneous and prejudicial to the interests of the revenue. This section is itself a mini code wherein proceedings for revision has also been provided and as per this provision, the first and foremost requirement for invoking the revisional proceedings is that the Id. Pr. CIT /CIT shall call and examine the assessment records of any proceedings under this Act, which include scrutiny assessment records and if after applying his mind to such record or proceedings, he consider that any order passed by the AO is erroneous and prejudicial to the interest of the revenue, then, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such enquiry, he deems necessary, pass such order thereon, as the circumstances of the case justify, which includes an order of enhancement or modification assessment or cancelling the assessment with a direction to pass fresh assessment order. Since both the issues were not considered by the AO in the original assessment order, Ld. Pr. CIT consider it necessary to direct the AO to enquiry the matter and reframe the assessment accordingly".

iv.) If the Tribunal does not follow its earlier order on similar facts and circumstances, then the matter should be referred to larger Bench. This preposition was laid down in the case of ACIT vs. Chandragiri Construction Co. (21 taxmann.com 167)(TM). The Findings of Hon'ble Third Member are as under in para-S of the order:

"The Tribunal is to follow the decision of another Bench where facts are the same. This is a treaty law. The only other alternative is to refer the matter to the larger bench if the Members of this Bench are not willing to follow the earlier order. In this case, there is no dispute that the facts and circumstances are the same as appearing in the assessment year 2002-03 except change in figures and it is also true that the very same Members decided the issues for assessment year 2002-03 in favour of the assessee. In such circumstances, the only course left to the Bench was to follow the earlier decision in order to gain confidence of public in the judicial system. In case the learned Accountant Member wanted to deviate from the earlier order, the only course left was to refer the matter to the larger bench with the concurrence of the learned Judicial Member which, in this case had not happened. Hence, I am of the view that the learned Accountant Member should have restrained from dissenting or he should have persuaded the learned Judicial

Member for referring the matter to the larger Bench. For the sake of uniformity, at least, the very same Bench should have followed its own order. The Bench should not come to a conclusion contrary to the conclusion reached in the earlier order of the Tribunal. In this case, the Bench being the same, definitely contrary view should not have been taken. In this view of the matter, I totally concur with the view of the Learned Judicial Member in respect of two issues viz. , accrual of retention money and bills receivable & work-In-progress. Thus, I decide the legal issue that the Bench should follow its earlier order, concurring with the learned Judicial Member".

v.) The CBDT Instruction relevant for the period as regards the limited scrutiny assessment is Instruction No.7/2014 dated 26.09.2014. instruction No.7/2014 reads as follow:-

'Subject: - Scope of enquiry in cases selected for scrutiny during the Financial Year 2014- 2015 on basis of mis-match-regarding-

It has come to the notice of the Board that during the scrutiny assessment proceedings some of the AOs are routinely calling for information which is not relevant, for enquiry into the issues to be considered. This has been causing undue harassment to the taxpayers and has also drawn adverse criticism from several quarters. Further, feedback and analysis of such orders indicates that many times the core issues, which formed the basis of selection of the case for scrutiny were not examined properly. Such instances primarily occurred in cases selected for scrutiny under Computer Aided Scrutiny Selection ('CASS') for verification of specific information obtained from third party sources which apparently did not match with the details submitted by the tax payer in the return of income.

2. Therefore, for proper administration of the Income-tax Act, 1961 ('Act'), Central Board of Direct Taxes, by virtue of its powers under section 119 of the Act, in supersession of earlier instructions/ guidelines on this subject, ere by directs that the cases selected for scrutiny during the Financial Year 2014-20 5 under CASS, on the basis of either AIR data or cm information or for non re-conciliation with 26AS data, the scope of enquiry should be limited to verification these particular aspects only. Therefore, in such cases, an Assessing Officer shall confine the questionnaire and subsequent enquiry or verification only to the specific point(s) on the basis of which the particular return has been selected for scrutiny.

3. The reason(s) for selection of cases under CASS are displayed to the Assessing Officer in AST application and notice u/s 143(2), after generation from AST, is issued to the taxpayer with the remark '-Selected under Computer Aided Scrutiny Selection (CASS)". The functionality in AST is being modified suitably to flag the reasons for scrutiny selection in cases.

This functionality is expected to be operationalised by 15th October, 2014. Further, the Assessing Officer while issuing notice under section 142(1) of the Act which is enclosed with the first questionnaire would proceed to verify only the specific aspects requiring examination/verification. In such cases, all efforts would be made to ensure that assessment proceedings are completed expeditiously in minimum possible number of hearings without unnecessarily dragging the case till the time-barring date.

4. In case, during the course of assessment proceedings it is found that there is potential escapement of income exceeding Rs. 10 lakhs (for non- metro charges, the monetary limit shall be Rs. 5 lakhs) on any other issue(s) apart from the information based on which the case was selected under CASS requiring substantial verification, the case may be taken up for comprehensive scrutiny with the approval of the Pr.CIT/DIT concerned. However, such an approval shall be accorded by the Pr. CIT /DIT in writing after being satisfied about merits of the issue(s) necessitating wider and detailed scrutiny in the case. Cases so taken up for detailed scrutiny shall be monitored by the It. CIT / Addl. CIT concerned.

5. The contents of this Instruction should be immediately brought to the notice of all concerned for strict compliance.'

The above Instructions have been modified subsequently vide Instruction No.20/2015 dated 29.12.2015 and Instruction No.5/2016 dated 14.07.2016. From para 4 of the above Instruction, it is clear that when potential escapement of income exceeds Rs.10 lakh on issues other than selected under CASS, the Assessing Officer has the power to take up the assessment for comprehensive scrutiny with the approval of the Pr.CIT/DIT concerned. In the present case, the potential escapement of income is far exceeding Rs.10 lakh prescribed under the above mentioned CBDT Instructions. Therefore, the Assessing Officer should have converted the limited scrutiny assessment in this case to a complete scrutiny assessment by taking approval/permission from the Pr.CIT/DIT concerned. This inaction on the part of the Assessing Officer has made the assessment order erroneous and prejudicial to the Interests of Revenue.

In view of above facts, the order passed by the CIT(Exemptions) needs to be upheld.

8. We have considered the rival submissions and perused the relevant material placed on record. In the present case, *prima facie*, the main legal ground agitated by the Id. AR was regarding issues raised in the revisionary proceedings u/s.263 of the Act which were not the subject

matter of consideration under the limited scrutiny before the AO. Ld. AR submitted that the Pr. CIT cannot travel beyond the issues for which the case was selected for scrutiny. Since the issues raised in the revisionary proceedings were fresh, therefore, the requisite two conditions precedent to be satisfied for exercising of jurisdiction u/s.263 of the Act that the assessment done by the AO should be erroneous and must be prejudicial to the interest of revenue, shall be in existence for invoking proceedings u/s.263 of the Act.

9. As per the submissions of the Id. CIT-DR the AO was duty bound in the limited scrutiny to ask for converting the same into full scrutiny when he came across the issues which required or it would have resulted in addition and consequently the assessment order was erroneous and prejudicial to the interest of revenue. He further submitted that the decision of the coordinate bench of the Cochin Tribunal in the case of Baby Memorial Hospital Ltd., 111 taxmann.com 189, which was followed by the coordinate bench of this Tribunal in the case of Sushant Kumar Chaudhury, in ITA No.226/CTK/2019, has decided the issue in favour of the revenue. Similar finding was given by this Tribunal in the case of Maa Tarini Industries Ltd., ITA No.292/CTK/2019, order dated 17.03.2020, wherein the issue of limited scrutiny was involved and the same was decided in favour of the revenue. It was also submitted that if this bench is unwilling to follow the decisions rendered in the case of Sushant Kumar Chaudhury (supra) and Maa Tarini Industries Ltd. (supra), the matter should be referred to the larger bench in view of the decision of the ITAT

Cochin Third Member in the case of ACIT Vs. Chandragiri Construction Co., 21 taxmann.com 167 (TM). Ld.CIT-DR prayed that the order of the Id.Pr.CIT be upheld or the matter may be referred to larger bench.

10. In view of the above facts, the issues in the present case, is as to whether the Pr.CIT could use his revisionary power to direct to make the addition by holding the assessment order erroneous and prejudicial to the interest of the revenue on the issues which are not connected issues to the issues which have been raised in the limited scrutiny in an assessment proceedings. This matter has recently been dealt with by this Bench of the Tribunal in the case of M/s Shark Mines & Minerals Pvt. Ltd., in ITA No.128/CTK/2019, order dated 18.08.2022, wherein it has been held as under :-

10. We have considered the rival submissions. The crux of the issue in the present case is whether the Pr. CIT could use his revisionary powers to direct to make the addition by holding the assessment order erroneous and prejudicial to the interest of the Revenue on issues which are not connected issues to the issues which have been raised in the limited scrutiny in an assessment proceedings. Here one must clearly understand that the fetters have been placed on the assessing authority in respect of limited scrutiny by various circulars issued by CBDT in Instruction No.7/14 dated 26.9.2014 and Instruction no.20/15 dt.19.12.2015. In the Instructions, it is categorically mentioned that in the case of Limited Scrutiny, the Assessing Officer cannot go beyond the issues which have been directed under the limited scrutiny. Once such fetters are placed on the AO in respect of limited scrutiny, the AO is barred from looking into any other issues other than those issues which are raised in the limited scrutiny. There could be such cases, where the AO while looking into issues which have been raised in the limited scrutiny, connected issues come up which could result in under assessment or escapement of assessment. It is in such cases, the AO is to take permission from the CCIT/Pr. CIT to expand the scope from limited scrutiny to complete scrutiny. Once such permission is granted and complete scrutiny is permitted, everything is opened to the AO to examine. Thus, in order to convert into a completed from limited scrutiny, connected issues should come up from limited scrutiny to give powers of the AO is to expand and get the permission for the complete scrutiny. In no

other cases, the AO can go beyond what is directed in the limited scrutiny.

11. In the present case, the limited scrutiny was in relation to excess liability shown in respect of trade payable and second issue was disallowance u/s.40A(3) of the Act. The show cause notice in respect of 263 shows that the issue was in respect of adoption of FIFO method of valuation of its closing stock. This issue is nowhere connected to the issue of excess liability shown or disallowance u/s.40A(3) of the Act. This is absolutely fresh unconnected issues, which the Pr.CIT has picked up. A revision u/s.263 is permissible when an assessment order is shown to be erroneous and prejudicial to the interest of the Revenue. Both the conditions are compulsorily to be there. In the present case, admittedly, the assessment order is a limited scrutiny assessment and no error in respect of the said assessment order passed in respect of limited scrutiny issues have been pointed out by the Pr. CIT for the purpose of invoking the powers u/s.263 of the Act. On this ground itself, the order passed by the Pr. CIT u/s.263 is liable to be quashed and we do so.

12. Coming to the issue of the decision of Co-ordinate Bench of this Tribunal in the case of Sri Sushant Kumar Choudhury (supra) The facts in the said case were that the pr. CIT mentioned that the order of the AO is erroneous insofar as he did not ask for permission for complete scrutiny and to that extent, the assessment order was erroneous and prejudicial to the interest of the Revenue. In the present case, there is no such averment by the pr. CIT. Even assuming such averment is there, the order of revision would be unsustainable insofar as the issue raised by Pr. CIT is in no way connected to the issues that have been raised in the limited scrutiny assessment. Thus, the decision in the case of Sri Sushanta Kumar Choudhury (supra) is clearly distinguishable. Therefore, the prayer of the Id CIT DR that the matter be referred to Larger Bench also does not survive insofar as the facts of the present case and in the said decision in the case of Sri Sushanta Kumar Choudhury (supra) is fully distinguishable.

13. This view of ours in respect of revision u/s.263 vis-à-vis limited scrutiny is also supported by the decision of the Co-ordinate Bench of ITAT Chennai in the case of Smt. Padmavathi referred to (supra) which has been approved by Hon'ble Madras High Court as also the decision in the case of Balvinder Kumar and Rajani Venkata Naga Annavarapu Narayana (supra) by Co-ordinate Benches of ITAT Delhi and ITAT Cuttack in the case of Akash Ganga Promoters and Developers (supra). In the circumstances, the revisionary order passed by Pr. CIT is found to be erroneous and same is quashed.

14. In the result, appeal of the assessee is allowed.

11. The case laws relied on by the Id. CIT-DR have already been specifically dealt with by this Tribunal in the above case. Since the matter has already been decided by this Bench of the Tribunal under identical facts and circumstances in favour of the assessee, therefore, respectfully following the decision in the case of M/s Shark Mines & Minerals Pvt. Ltd. (supra), we are of the considered opinion that the revisionary order passed by the Pr.CIT is unsustainable and the same is liable to be quashed.

12. Since the revision proceedings u/s.263 of the Act are quashed as per our above observations on legal ground, therefore, other grounds of the appeal are become academic and are not adjudicated upon.

13. In the result, appeal of the assessee is allowed.

Order dictated and pronounced in the open court on 19/12/2022.

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(अरुण खोड़पिया)

(ARUN KHODPIA)

लेखा सदस्य/ ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 19/12/2022

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
SIKSHA 'O' ANUSANDHAN
Plot No.224, Dharma Vihar, Khandagiri, Bhubaneswar
2. प्रत्यर्थी / The Respondent-
CIT(Exemption), Hyderabad
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कटक** / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack