आयकर अपीलीय अधिकरण, **'बी' न्यायपीठ, चेन्नई।**
**IN THE INCOME TAX APPELLATE TRIBUNAL**
**'B' BENCH: CHENNAI**

**श्री महावीर सिंह, माननीय उपाध्यक्ष,** एवं
श्री **जी. मंजूनाथा, , माननीय** लेखा सदस्य **के समक्ष**
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./**ITA No.232/Chny/2021**
निर्धारण वर्ष **/Assessment Year: 2015-16**

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| M/s.Duckwoo Autoind Pvt. Ltd.,<br>No.367, Neyveli Village,<br>Poondi, Thiruvallur Taluk-602 023.<br>[**PAN:** AACCD 8368 K] | **v.** | The Principal Commissioner-<br>of Income Tax-1,<br>Chennai. |
| **(**अपीलार्थी**/Appellant)** | | **(**प्रत्यर्थी**/Respondent)** |

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|---|---|---|
| अपीलार्थी की ओर से/ Appellant by | : | Dr.M.Abishek, FCA |
| प्रत्यर्थी की ओर से /Respondent by | : | Mr.S.Maruthu Pandian, CIT |
| सुनवाई की तारीख/Date of Hearing | : | 17.11.2022 |
| घोषणा की तारीख /Date of Pronouncement | : | 21.12.2022 |

## आदेश **/ O R D E R**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

This appeal by the assessee is arising out of the revision order u/s. 263 of the Income Tax Act, 1961 (hereinafter "the Act") passed by the Principal Commissioner of Income Tax-1, Chennai, vide No. C.No.218/U/s.263/PCIT-1/2020-21 dated 23.03.2021. The assessment was framed by the Asst. Commissioner of Income Tax (OSD), Corporate Range-1, Chennai, for the AY 2015-16 u/s.143(3) of the Act, vide his order dated 27.09.2017.

**2.** At the outset, it is noticed that this appeal filed by the assessee is barred by limitation by '29' days. As per Form No.36, the order of the PCIT

revising the assessment u/s.263 of the Act dated 23.03.2021, was received by the assessee on 26.03.2021. Appeal against this order was to be filed before the Tribunal on 23.06.2021 as against the last date for filing of the appeal before the Tribunal is 25.05.2021. Thereby, there is a delay of 29 days. The Ld.Counsel for the assessee stated the period falling under delay is covered by the decision of the Hon'ble Supreme Court in Miscellaneous Application No.665 of 2021 vide order dated 23.03.2020 giving directions that the delay is to be condoned during this period 15.03.2020 to 14.03.2021 and further, they have condoned the delay up to 28.02.2022 in Miscellaneous Application No.21 of 2022 vide order dated 10.01.2022. In term of the directions of the Hon'ble Supreme Court, we condone the delay and admit the appeal.

**3.** The only issue in this appeal of the assessee is against the revision order passed by the PCIT u/s.263 of the Act, and the first facet of challenge was that whether the PCIT can revise the assessment framed by the AO u/s.143(3) of the Act, when the assessment itself was a limited scrutiny assessment and the issue on which limited scrutiny assessment framed was not before the PCIT or the PCIT can deliberate on any other issue other than the issue dealt by the AO in limited scrutiny assesssment.

**4.** The brief facts of the case are that the assessee company filed its return of income for the AY 2015-16 on 30.11.2015. The assessee's case was selected for scrutiny assessment through CASS for limited scrutiny assessment by issuance of notice u/s.143(2) of the Act. This is an admitted

fact and recorded in the assessment order. As per limited scrutiny, notice issued dated 28.07.2016, the case was selected for limited scrutiny on the following issues:

i. Import turnover mismatch
ii. Custom Duty Payment Mismatch

Further, a notice was issued from the Office of the AO on 05.06.2017 and on the above two issues, the following details were called for:

*i. Breakup of purchases party wise.*
*ii. Breakup of domestic purchases and imports along with party-wise details.*
*iii. Details of trade creditors along with opening and closing balances.*
*iv. Details of LCs availed/proofs of payments made in respect of Imports/domestic purchases.*
*v. Proof for customs duty paid and Invoice value of imports.*
*vi. Details of invoice value of imports assessed for the purpose of customs duty.*

*This may be treated as communication u/s.142(1) of IT Act, 1961 and non-compliance entails initiation of penalty u/s.271(1)(b) of the IT Act, 1961.*

*Submission of required details through Tapal/Post shall be regarded as sufficient compliance.*

**5.** The AO, accordingly, framed assessment u/s.143(3) of the Act, and accepted the returned loss of Rs.1,40,01,528/- vide order dated 27.09.2017.

**6.** Subsequently, the PCIT on examination of case records and going through the accounting policies and note to the financial statements Para-2.4 & Inventory, noted that there are common inventories and also noted from the depreciation statement that the company is only in the process of establishing its business and it is not ready for operations. He also noticed from the P & L A/c filed along with return of income that the assessee has debited only expenses relating to employee benefits and administration

expenses and no expenses has been debited relating to production. According to him, the assessee has not commenced his business operations and therefore, the above expenses of depreciation, expenses relating to employee benefit, administrative expenses, etc., to the tune of Rs.1,40,01,528/- are pre-operative expenses and the same are not allowable. Accordingly, the PCIT issued show cause notice, but the assessee replied on jurisdiction. The PCIT was not convinced with the reply and noted that the expenses incurred by the assessee are to be disallowed and AO without verification or any inquiry accepted the claim of the assessee and hence, he treated the assessment order framed by AO as erroneous and prejudicial to the interest of the Revenue. Hence, he set aside the assessment order and directed the AO to re-frame the assessment after allowing opportunity of being heard to the assessee by observing in Para Nos.6-8 as under:

> *6. The reply dated 12.01.2021 filed by the assessee has been carefully examined. The assessee has filed copies of P&L account, Balance Sheet as on 31.03.2009 & 31.03.2010. The contention of the assessee is that the assessee company during FY 2009-30 started trading operations by importing finished products and continued the trading operations for a certain period of time, since when the day to day operational expenses have been treated as revenue expenditure and charged to P & L account. Thereafter as inflow of orders were not, adequate the trading operations were not continued. The company thrived by exploring after business prospects by deploying its manpower and these expenses were revenue in nature and charged to P&L account. In this way, the assessee was able to upgrade^ to manufacturing activities. Therefore, the entire business was already commenced and the expenses being revenue in nature ought to be allowed.*
>
> *7. In the case under consideration, the Assessing Officer has accepted the claim of the assesses without making due verification and without conducting the necessary enquiries.*
>
> *8. In view of the above, there is a total lack of application of mind on the part of the Assessing Officer and this is fit case to invoke the provisions of Sec.263 of the Act. Therefore, in conclusion the Assessing Officer has failed to make a complete verification with respect to the aspect as discussed supra and had passed the*

*Assessment Order u/s 143(3) of the Act, without proper diligent application of mind and enquiry, and hence in my considered opinion the assessment order so passed is both erroneous and prejudicial to the interest of the revenue. Accordingly, the assessment order is hereby set aside u/s 263 of the Act, with a direction to the Assessing Officer to examine the issue, as discussed in the order, during the Accounting Year in question and pass a fresh order after granting opportunity to the assessee, within stipulated time. The assessee can furnish documents which were not available at the time of assessment in the records of the Assessing Officer for fresh examination.*

Aggrieved, the assessee is in appeal before us.

**7.** Before us, the Ld.Counsel for the assessee first of all made submissions that the assessee's case was selected for scrutiny assessment on limited scrutiny to examine the two issues, which are as under:-

i. Import turnover mismatch
ii. Custom Duty Payment Mismatch

**8.** The Ld.Counsel for the assessee stated that the AO has examined these two issues in detail after issuing questionnaires and enquiries on the issues and framed assessment u/s.143(3) of the Act. The Ld.Counsel for the assessee stated that the PCIT now has raised a new issue altogether i.e. pre-operative expenses, depreciation, expenses relatable to employee benefits, administrative expenses, etc., amounting to Rs.1,40,01,528/- and according to him, which requires to be disallowed. The Ld.Counsel for the assessee stated that according to the PCIT, the assessment order is erroneous as well as prejudicial to the interest of the Revenue in terms of his findings given in Para Nos.6-8, which is reproduced above in this order. The Ld.Counsel for the assessee stated that this issue is clearly settled by the co-ordinate Bench of this Tribunal in the following cases:

1) Balvinder Kumar v. PCIT reported in [2021] 187 ITD 454.
2) Rajani Venkata Nagar Annavarapu Narayana v. PCIT in ITA No.1817/Del/2020.
3) Sonali Hemant Bhavaskar v. PCIT in ITA No.742/M/2019.

**9.** On the other hand, the CIT-DR filed copy of Tribunal order in the case of M/s. Sahayamatha Salterns Pvt. Ltd., in ITA No.1498/Chny/2019 dated 11.12.2019, wherein, the Tribunal has considered exactly identical issue and finally held that the Tribunal has not considered CBDT Instruction No.20/2015 dated 29.12.2015 and as per exceptional sub-clause (d) of Clause-3 of CBDT Instruction, was never considered. The Tribunal considered this issue and held that even in limited scrutiny assessment, there is no bar on the PCIT to revise the assessment order even on any other issue. For this, Tribunal recorded the findings in Para No.9 as under:

> *9. We heard the rival submissions and perused the material on record. The only issue in the present appeal relates to the validity of power of revision exercised by the ld. PCIT u/s.263 of the Act. Admittedly, the assessment was completed by the Assessing Officer under limited scrutiny assessment in order to verify the following two items.*
>
> *a) ''Large other expenses claimed in the Profit and Loss account.*
>
> *b) Mismatch between income/receipt credited to profit and loss account considered under other heads of income and income from heads of income other than business of profession''*
>
> *the Assessing Officer completed the assessment after due verification of these items. From the perusal of Sub Clause (d) of Clause 3 of the said CBDT Instruction No.20/2015, dated 29th December, 2015, the Assessing Officer is empowered to take up any other issue for assessment with the approval of the ld. PCIT/CIT concerned, which has come to the notice of the Assessing Officer that there is potential escapement of income exceeding G5 lakhs for non-metro and Rs.10 lakhs in the case of metro. In the present case, admittedly, the Assessing Officer was in receipt of information from the Deputy Commissioner of Income tax, Central Circle-1, Madurai vide letter dated 18.09.2015 stating that assessee had paid on money consideration at the time of purchase of land located in Periakulam Village in Ramanathapuram Dist to M/s. DSF group. Undisputedly, this information forms part*

*of record has material bearing in the assessment of the tax liability of the assessee. Therefore, considering exception clause carved in Sub Clause (d) of Clause 3 of the said CBDT Instruction, the Assessing Officer should have sought permission from the ld. PCIT to enquire into this issue of assessability of payment of on-money consideration at the time of purchase of land. There is no gain saying that non enquiry of an issue renders an assessment order erroneous and prejudicial to the interests of the Revenue, if the procedure followed by the Assessing Officer to bring in lesser revenue than some other procedure, the order passed by the Assessing Officer would obviously be erroneous and prejudicial to the interests of the Revenue, it would give jurisdiction to the ld. PICT u/s.263 of the Act, as held by the Patna High Court in the case of CIT vs. Pushpa Devi, (1987) 164 ITR 639. The relevant para is extracted below.*

> *"17. If the rigors of an enquiry and investigation had been relaxed by the scheme of the Board, 'the order of the Tribunal would have been perfectly justified. Let us, therefore, pursue the Scheme. I have quoted earlier the salient aspects of the Scheme. In paragraph 4 it has been specifically stated that 'returns of income filed in the names of minors and ladies should not, however, be accepted without proper enquiries.' What is the content of this sentence. In my view, it clearly means that minors and ladies were not covered by the Scheme. It applied to others and not minors and ladies. They not having formed part of the Scheme, there was no relaxation for them. No spot assessment was to be done in the case of return filed by minors and ladies. They must have been excepted precisely on the ground that unscrupulous assessee might endeavour to lessen the tax burden upon themselves by filing returns in the names of their wives and minor children. I must confess, I have some difficulty in appreciating that if the Scheme did not apply to minors; and ladies, how the rigors of enquiry and investigation was reduced in their case. It is well established that circulars of the Board issued in exercise of powers under section 119 have a binding effect and the revenue are bound to act upon them. It is not necessary to labour on that question, but the most question is whether the Scheme encompassed ladies and minors. I am clearly of the view that it did not. If it did not include them, any discussion on the binding character of the orders of the Board have no relevance. The Vice President Mr. Mathur took note of the fact that the scheme of the Board made a distinction between the adult male assessees and assessees who are ladies and minors. He rightly observed that the distinction was done because the Government found some unscrupulous assessees having huge income may be trying to reduce the rate of the tax applicable to them by showing the income in the names of ladies and minors to whom lower rate of tax was applicable. He rightly observed that in the case of ladies and minors the proper enquiries required to be made was only to confirm whether ladies and minors were benamidars of some other assessees whose income was taxable at higher rate of tax. Was that done? Certainly not. Having missed the central point, the Tribunal fell into a grievous error in holding that the assessment had to be completed within the period of grace. Not to complete it within that period would be denying to a lady or minor assessee to the benefit of the scheme. I regret, the majority conclusion of the Tribunal is fallacious. The law in regard to assessment was not modified so far as ladies and minors were concerned. In the course of mass communication whenever a return was filed by a lady or a minor, it could have been accepted, but could not have been disposed of in terms of the scheme. It should have been treated as an original assessment proceeding- with all the rigors in regard to initial capital investment. No correction or amelioration of the procedure in their case was envisaged. These assessments had to be completed in terms of section*

*143(3) and where it was prejudicial to the revenue the Commissioner would be fully justified in setting aside such assessments. In fact, in the course of mass communication if a return was filed on behalf of a lady or a minor, the ITO would have been fully justified in not accepting them at the spot and calling upon them to file the return in the department as if the scheme did not exist. There is slight distinction on facts between the case of Smt. Rambha Devi (supra) and the case of the present assessee. In the former case the return had been filed on 22-12-1972, the Inspector conducted inquiry on 27-12-1972. Thereafter, assessment was made. Thus, there was at least a gap of five days between filing of the return and the assessment. What difference the gap of five days would have, would be a matter to be considered when the reference in the case of Smt. Rambha Devi (supra) is taken up by this Court. But in the instant case, the return was filed on 14-12-1972, and the Inspector's enquiry was completed on the same day and the assessment was made on the very same day for all the assessment years except 1973-74 at the spot. Mr. P.D. Mathur distinguished the case of Thalibai F. Jain v. ITO [1975] 101 ITR 1 (Kar.) on the footing that the ITO had made the assessment without enquiry and evidence and in undue haste. The situation in the instant case, is exactly similar. The filing of return, the equiry and assessments were all done on the same day. I am, therefore, firmly of the view that the enquiry, if at all there was any, was conducted in undue haste. If any enquiry worth the name was conducted, the attention of the Inspector and the ITO was not directed towards ascertainment of the core question, namely, when and from where did funds come and whether the case of the assessee in regard thereto was gullible. The enquiry not having directed towards that question, it was no equiry. The scheme did not liberalise matters for the assessee, who was a lady, wife of a trader. The assessment, thus, on the basis of such enquiry was clearly erroneous.*

*18. That brings us to the question of jurisdiction of the Commissioner under section 263 to cancel assessment and direct a fresh assessment. If the assessment is erroneous, it must toe presumed to be prejudicial to the interest of the revenue. The finding of the Commissioner in this case was that the order of the assessment was prejudicial to the interest of the revenue, as the assessee may have been a mere benamidar of her husband. It is true that the Commissioner did not record a concluded finding that she was a benamidar. But if he had done so, he would have laid himself open to the charge that the dice had been loaded against the assessee, the Commissioner, therefore, rightly only ordered further investigation into the claim of the assessee upon this finding if the funds had been provided by the assessee's husband, the income would be taxable in his hands over which a higher rate of tax may have been applicable. In that situation, the order of assessment of the wife, would be per se prejudicial to the revenue. It does no need much argument to convince that if the procedure adopted by an ITO brings in lesser revenue than some other procedure, the order would obviously be prejudicial to the revenue. If that is so, the order of assessment is prejudicial to the revenue. It cannot be doubted that the Commissioner would then have the jurisdiction to act in terms of section 263 and order cancellation of the previous assessment and direct fresh assessment. Reliance placed by the learned senior standing counsel in this regard in Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323 is well placed. The Supreme Court in that case observed that:*

> *" . . . Even where an income has not been earned and is not assessable, merely because the assessee wants it to be assessed in his or her hands in order to assist someone else who would have*

> *been assessed to a larger amount, an assessment so made can certainly be erroneous and prejudicial to the interest of the revenue. . . . " (p. 328)*
>
> *The case of the Supreme Court in Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84 also supports the revenue. The majority view of the Tribunal distinguishes those cases on some misconception''.*

*Therefore, in our considered opinion, the Assessing Officer not following procedure prescribed in Sub Clause (d) of Clause of 3 of said CBDT instruction would render the assessment order erroneous and prejudicial to the interests of the Revenue, thereby confirming the jurisdiction on ld. PCIT u/s.263 of the Act. As regards to the decision of Co-ordinate Bench of the Tribunal in the case of Smt. Padmavathi (supra) to which one of us i.e. the Accountant Member is the author of the order. In the said decision the Tribunal had rendered decision overlooking exceptional clause carved out in Sub Clause (d) of Clause 3 of CBDT Instruction No.20/2015, dated 29.12.2015. Thus, the decision is per incuriam. It is needless to say that an order which is per incuriam has no precedential value. In the circumstances, we are of the considered opinion that ld. PCIT was justified in exercising the jurisdiction vested with him u/s.263 of the Act.*

**10.** On a query from the Bench, the Ld.Counsel for the assessee filed copy of judgment of the Hon'ble Madras High Court in the case of CIT v. Smt. Padmavathi in TCA No.350 of 2020 dated 06.10.2020 and also filed copy of CBDT Instruction No.20/2015 dated 29.12.2015.

**11.** We have heard the rival contentions and gone through the facts and circumstances of the case. Admitted position of facts in the present case before us is that the original scrutiny assessment was taken up for limited scrutiny under the following two heads:

i. Import turnover mismatch
ii. Custom Duty Payment Mismatch

**12.** The PCIT passed revision order to revise the assessment u/s.263 of the Act, for making disallowance of pre-operative expenses i.e. depreciation expenses debited only relating to employee benefits, administrative

expenses, etc., amounting to Rs.1,40,01,528/-. According to the PCIT, the AO has accepted the claim of the assessee without making any due verification and without conducting the necessary enquiries. Hence, he set aside the assessment. Now before us, the same was challenged on the issue that once the assessment framed u/s.143(3) of the Act, by issuing notice u/s.142(1) of the Act, for limited scrutiny can PCIT revise the assessment order on some other issue, which is not connected with the issues raised in limited scrutiny by the AO.

**13.** We have gone through the case laws of the Hon'ble madras High Court in the case of Smt. Padmavathi (supra) and noted that the Hon'ble Madras High Court has vacated the observations made by the Tribunal in the case of Smt. Padmavathi with regard to the scope of limited scrutiny assessment and this issue was examined by the Hon'ble Madras High Court in Para Nos.11-14 as under:

> *11. It is further submitted that the Tribunal in a subsequent decision, authored by the very same Hon'ble Member took note of the circular and decided the case against the assessee in ITA No.1498/Chny/2019 in the case of M/s Sahayamatha Salterns Private Limited, Tuticorin Vs. Deputy Commissioner of Income Tax, Circle I, Tuticorin dated 11.12.2019. Therefore, it is submitted that the Substantial Question of Law no.3 has to be answered in favour of the revenue.*
>
> *12. Mr.G.Baskar, learned counsel appearing for the respondent / assessee submitted that the revenue is right in submitting that in the case of Sahayamatha Salterns Private Limited, the Tribunal noted the instruction No. 20/2015 dated 29.12.2015 and decided the matter against the assessee. However, the assessee has filed an appeal before this Court in TCA.No.350 of 2020 TCA No.158 of 2020 and the appeal has been admitted to consider the substantial question of law, which has been framed almost on similar lines, as substantial question of law no.3 above.*
>
> *13. We note that the Tribunal did not consider the effect of instruction no.20/2015, which had been considered in the case of Sahayamatha Salterns Private Limited, which issue is now pending before the Division Bench of this Court by way of a Tax Case Appeal, therefore, we are of the view that the Revenue can agitate the said question in the said tax case appeal and it would suffice to vacate the observations*

*made by the Tribunal in the impugned order to the extent with regard to the scope of 'limited scrutiny assessments'.*

*14. Accordingly, that portion of the order and observations made in paragraph no.7 of the impugned order are set aside and the substantial question no.3 is left open to be agitated by the Revenue in TCA No.158 of 2020.*

It means Hon'ble High Court has left this issue open and there is no adjudication.

**14.** Now, we have gone through the CBDT Instruction No.20/2015 dated 29.12.2015 and the relevant directions reads as under:

***Subject**: Scrutiny Assessments-some important issues and scope of scrutiny in cases selected through Computer Aided Scrutiny Selection ('CASS')-reg .-*

*The Central Board of Direct Taxes ('CBDT'), vide Instruction No. 7/2014 dated 26-9-2014 had clarified the extent of enquiry in certain category of cases specified therein, which are selected for scrutiny through CASS. Further clarifications have been sought regarding the scope and applicability of the aforesaid Instruction to cases being scrutinized.*

*2. In order to facilitate the conduct of scrutiny assessments and to bring further clarity on some of the issues emerging from the aforesaid Instruction, following clarifications are being made:*

*i.* ***Year of applicability**: As stated in the Instruction No. 7/2014, the said Instruction is applicable only in respect of the cases selected for scrutiny through CASS-2014.*

*ii.* ***Whether the said Instruction is applicable to all cases selected under CASS:** The said Instruction is applicable where the case is selected for scrutiny under CASS only on the parameter(s) of AIR/CIB/26AS data. If a case has been selected under CASS for any other reason(s)/parameter(s) besides the AIR/CIB/26AS data, then the said Instruction would not apply.*

*iii.* ***Scope of Enquiry:** Specific issue based enquiry is to be conducted only in those scrutiny cases which have been selected on the parameter(s) of AIR/CIB/26AS data. In such cases, the Assessing Officer, shall also confine the Questionnaire only to the specific issues pertaining to AIR/CIB/26AS data. Wider scrutiny in these cases can only be conducted as per the guidelines and procedures stated in Instruction No. 7/2014.*

*iv.* ***Reason for selection:** In cases under scrutiny for verification of AIR/CIB/26AS data, the Assessing Officer has to intimate the reason for selection of case for scrutiny to the assessee concerned.*

*3. As far as the returns selected for scrutiny through CASS-2015 are concerned, two type of cases have been selected for scrutiny in the current Financial Year- one is 'Limited Scrutiny' and other is 'Complete Scrutiny'. The assessees concerned have duly been intimated about their cases falling either in 'Limited Scrutiny' or*

*'Complete Scrutiny' through notices issued under section 143(2) of the Income-tax Act, 1961 ('Act'). The procedure for handling 'Limited Scrutiny' cases shall be as under:*

*a. In 'Limited Scrutiny' cases, the reasons/issues shall be forthwith communicated to the assessee concerned.*
*b. The Questionnaire under section 142(1) of the Act in 'Limited Scrutiny' cases shall remain confined only to the specific reasons/issues for which case has been picked up for scrutiny. Further, the scope of enquiry shall be restricted to the 'Limited Scrutiny' issues.*
*c. These cases shall be completed expeditiously in a limited number of hearings.*
*d. 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. Such cases shall be monitored by the Range Head concerned. The procedure indicated at points (a), (b) and (c) above shall no longer remain binding in such cases. (For the present purpose, 'Metro charges' would mean Delhi, Mumbai, Chennai, Kolkata, Bengaluru, Hyderabad and Ahmadabad).*

*4. The Board further desires that in all cases under scrutiny, where the Assessing Officer proposes to make additions or disallowances, the assessee would be given a fair opportunity to explain his position on the proposed additions/disallowances in accordance with the principle of natural justice. In this regard, the Assessing Officer shall issue an appropriate show-cause notice duly indicating the reasons for the proposed additions/disallowances along with necessary evidences/reasons forming the basis of the same. Before passing the final order against the proposed additions/disallowances, due consideration shall be given to the submissions made by the assessee in response to the show-cause notice.*

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

**15.** After going through the case law of the Hon'ble Madras High Court in the case of Smt. Padmavathi (supra) as well as the Tribunal decision in the case of M/s.Sahayamatha Salterns Pvt. Ltd. v. DCIT in ITA No.1498/Chny/2019 dated 11.12.2019 cited by the CIT-DR and also the case law cited by the Ld.Counsel for the assessee, at first, we have gone through various CBDT Instructions issued from time to time and for the sake of convenience and clarity, we extract the relevant portions thereof as under:

***"CBDT Instruction No. 7/2014***

*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 AIR/CIB/26AS cases. This functionality is expected to be operationalized 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.*

***CBDT Instruction No. 5/2016***

*"4. It is further clarified that in cases under 'Limited Scrutiny/the scrutiny assessment proceedings would initially be confined only to issues under 'Limited Scrutiny' and Questionnaires, enquiry, investigation etc. would be restricted to such issues. Only upon comers ion of case to 'Complete Scrutiny' after following the procedure outlined above, the AO may examine the additional issues besides the issue(s) involved in 'Limited Scrutiny'. The AO shall also expeditiously intimate the taxpayer concerned regarding conducting 'Complete Scrutiny1 in such cases."*

***CBDT Letter dated 30-11-2017***

*J Instances have come to notice of CBDT where some Assessing Officers are travelling beyond their jurisdiction while making assessments in Limited scrutiny cases by initiating inquiries on new issues without complying with mandatory requirements of the relevant CBDT Instructions dated 26-9-2014, 29-12-2015 and 14-7-2016. These instances have been viewed very seriously by the CBDT and in one case the Central Inspection Team of the CBDT was tasked with examination of assessment records on receipt of a I lee at ions of several irregularities. Amongst other irregularities, i; was found that no reasons had been recorded for expanding the scope of limited scrutiny, no approval was taken from the PCIT for the conversion of the limited scrutiny case to a complete scrutiny case and the order sheet was maintained very perfunctorily. This gave rise to a very strong suspicion of mala fide intentions."*

**16.** Now, under contentions are, the CBDT Instruction No.20/2015 dated 29.12.2015, which are relevant to the assessment year, the clause (b) & (d) are very important, which clarifies the issue and for the sake of clarity, these are extracted as under:

*b) The Questionnaire under section 142(1) of the Act in 'Limited Scrutiny' cases shall remain confined only to the specific reasons/issues for which case has been picked up for scrutiny. Further, the scope of enquiry shall be restricted to the 'Limited Scrutiny' issues.*

*d) 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. Such cases shall be monitored by the Range Head concerned. The procedure indicated at points (a), (b) and (c) above shall no longer remain binding in such cases. (For the present purpose, 'Metro charges' would mean Delhi, Mumbai, Chennai, Kolkata, Bengaluru, Hyderabad and Ahmadabad).*

**17.** Combined reading of instructions issued by CBDT and particularly, the CBDT Instruction No.20/2015 dated 29.12.2015, sub-clause (b) of Clause (3) categorically states that questionnaire issued u/s.142(1) of the Act, in a limited scrutiny case, shall remain confine only to the specific reasons/issues for which case has been picked up for scrutiny. Further, the scope of enquiry shall be restricted to the limited scrutiny issues. Sub clause (d) of Clause-3 further reads the expansion of the scope of limited scrutiny and there are certain conditionality. The conditionalities are that during the course of assessment proceedings, in a limited scrutiny case, if it comes to notice to the AO that there is a potential escapement of income exceeding Rs.5 lakhs for normal CIT charge and for metro CIT charge, monetary limit shall be Rs.10 lakhs requiring substantial verification on any other issue, then the case may be taken up for complete scrutiny with the prior approval of the PCIT/CCIT concerned. The another condition put forth by the CBDT is that such approval thereof accorded by the PCIT in writing after being satisfied about imports of the issues necessitating complete scrutiny in that particular case. Further condition that such cases shall be monitored by the Range Head and procedure indicated in Sub-clauses (a)

(b) (c) above no longer be remain pending in such cases, which means and reading together clause (b) and (d) itself clarified that in case, the limited scrutiny cases are picked up for scrutiny assessment, the AO shall remain confine to the only reasons / issues for which case has been picked up for scrutiny and the scope of enquiry be restricted to the limited scrutiny issues only. The expansion of scope of scrutiny from limited scrutiny to complete scrutiny is that during the course of assessment proceedings, which comes to the notice of the AO that the potential escapement of income exceeding Rs.5 lakhs for normal CIT charge and exceeding Rs.10 lakhs for monetary limits for metro CIT charge. The case can be taken up for complete scrutiny with the approval of the PCIT / CCIT concerned, which means that the AO is empowered to enlarge the scope of limited scrutiny case to the complete scrutiny assessment in view of the above condition only and that also through quasi-judicial powers.

**18.** Now, we have to examine what the PCIT can do while invoking the revision power u/s.263 of the Act, for revising the assessment order framed by the AO. According to us, the AO while passing an order of assessment performs a quasi-judicial functions, revision power lies with the PCIT. It is trite law that the jurisdiction exercised by the revisional authority pertains to his appellate jurisdiction. The jurisdiction u/s.263 of the Act can be exercised only when the following two conditions are satisfied.

*a) The order passed by the AO should be erroneous and*
*b) It should be prejudicial to the interest of the Revenue.*

These conditions are conjective. The order of assessment passed by the AO cannot be interfered by any other reason. The object of the provisions of Sec.263 of the Act, is to correct an order which is erroneous as well as prejudicial to the interest of the Revenue. The purpose behind incorporating the said provision in the statute is to ensure that interest of the Revenue is safeguarded against erroneous order passed by the AO as the Department, has no right to file an appeal against the order of the AO. It has no power as a substitute of the power of the AO to make assessment, whereas the revision power u/s.263 of the Act, is certainly available where the order of the AO is erroneous as well as prejudicial to the interest of the Revenue. But, according to us, there is no straight jacket formula for categorizing an order to be erroneous as well as prejudicial to the interest of the Revenue, but depends upon the facts of each case.

**19.** In the present case, now whether the AO has power to examine in other aspect in a limited scrutiny or not is vital question. The CBDT Instruction No.20/2015 dated 29.12.2015 sub-clause (b) to Clause (3) categorically limits the power in limited scrutiny case and which confines only to the specific reasons/issues for which case has been picked up for scrutiny and further, the scope of enquiry shall be restricted to limited scrutiny issues only. This is the clear intention of the CBDT. Further, going through the above said instructions, we noted that the limited scrutiny can be enlarged to complete scrutiny, but subject to certain conditions that during the course of assessment proceedings, if it comes to the notice of

the AO that there is a potential escapement of income exceeding Rs.5 lakhs in normal CIT charge and in metro CIT charge Rs.10 lakhs requiring special verification on any other issue, then he can take up for complete scrutiny with the approval of the PCIT concerned. But, in this case, the AO was not of such view that any other issue requires verification. The above CBDT Instructions later clearly establishes that it is not open for the AO to travel beyond the reasons for selection of the scrutiny for limited scrutiny and on that aspect the assessment order completed in this case in accordance with the CBDT Instruction No.20/2015 dated 29.12.2015.

**20.** In view of the above discussions, considering the instruction issued by the CBDT No.20/2015 dated 29.12.2015 and in particular sub-clause (d) of Clause-3, we are of the view that once the AO cannot examine any other issue except the issue as selected for limited scrutiny assessment, the PCIT can examine the only issue which was before the AO during the course of scrutiny assessment and not any other issue, which has not been subject matter of the AO for the assessment in a limited scrutiny assessment. Hence, we quash the revision order and allow the appeal filed by the assessee.

**21.** In the result, the appeal filed by the assessee is allowed.

Order pronounced on the 21st day of December, 2022, in Chennai.

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|---|---|
| ***Sd/-*** | ***Sd/-*** |
| **(जी. मंजूनाथा)** | **(महावीर सिंह)** |
| **(G. MANJUNATHA)** | **(MAHAVIR SINGH)** |
| लेखा सदस्य**/ACCOUNTANT MEMBER** | **उपाध्यक्ष /VICE PRESIDENT** |

चेन्नई/Chennai,
दिनांक/Dated: 21st December, 2022.
***TLN***

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF