

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
**Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member**

आयकर अपील सं./I.T.A. No.228/Chny/2022
निर्धारण वर्ष/Assessment Year: 2017-18

K. Chandraprakash (HUF),
No. 15, Kathiravan Garden,
Singanallur, Coimbatore 641 005.

Vs. The Principal Commissioner of
Income Tax-1,
Coimbatore.

[PAN:AAJHK2315R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri H. Yeshwant Kumar, C.A.
प्रत्यर्थी की ओर से/Respondent by : Shri M. Rajan, CIT
सुनवाई की तारीख/ Date of hearing : 09.01.2023
घोषणा की तारीख /Date of Pronouncement : 13.01.2023

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Principal Commissioner of Income Tax-1, Coimbatore dated 22.02.2022 relevant to the assessment year 2017-18 passed under section 263 of the Income Tax Act, 1961 ["Act" in short].

2. Facts are, in brief, that the assessee filed the return of income for the assessment year 2017-18 on 31.12.2017 admitting total income of ₹.10,94,850/- and claimed agricultural income of ₹.36,75,000/-. The case

was selected for scrutiny under CASS "LIMITED SCRUTINY" category. The reason description for selection was "Cash deposit during demonetisation". Notice under section 143(2) of the Act dated 09.08.2018 was issued and served to the assessee. Further notice under section 142(1) of the Act dated 22.04.2019 was issued to the assessee calling for details. In response to the notice under section 142(1) of the act, the assessee uploaded explanation letter regarding source for cash deposit, income computation statement, bank statement, agricultural income and expenditure account, land holding documents, wealth tax return and other details. By considering the above details, the Assessing Officer completed the assessment under section 143(3) of the Act dated 27.09.2019.

3. Subsequently, by exercising the power conferred under section 263 of the Act, the Id. PCIT issued show cause notice to the assessee on the ground that the Assessing Officer has not examined the purchase of land vide document No. 1919/2016 and 1918/2016 and its difference in cost of ₹.2,76,600/- and ₹.25,00,950/- respectively. In response to the above show cause notice, the assessee filed detailed explanation. By considering the explanation of the assessee, the Id. PCIT has directed the Assessing Officer to redo the assessment by observing as under:

“5. The submissions of assessee supra, the facts of the case and the impugned assessment order have been carefully considered. The only issue to be adjudicated upon in this current proceedings is whether or not, the purchase of agricultural land at a rate, less than the market rate or the rate determined by the Stamp Duty Authority would come under the ambit of invoking the provisions of section 56(2)(vii) of the Act or not? The provisions of section 56(2)(vii) of the Act states that if an individual or HUF receives any property for a consideration which is less than the FMV of the property, the difference shall be brought to tax in the hands of the assessee/recipient under the head "Income from Other Sources". The Section 56(2) has been amended many a times to tax and exclude certain transactions. This section 56(2)(vii) covers transactions where an “immovable property” is received without or inadequate consideration except in certain circumstances. It is pertinent to note here that the words used in this section are **any immovable property**. That is to say, if an individual or HUF receives “any immovable property”so on, then this section is applicable. In other words, the section 56(2) of the Act does not distinguish between a “**a capital asset**” or a **non-capital asset**”. It speaks of any immovable property. The language used in a particular section should be read in a simple and normal way. Therefore, the word used in this section "any" should be construed in the normal sense and this should not be deflected in a way that defeats the intention of the legislature. However, it can be argued that the phrase 'capital asset' has been defined vide section 2(14) is not only for the purposes of capital gains and for the entire purposes of the Act and hence, the immovable property which is not in the nature of capital asset is not taxable under section 56(2) of the Act. However, 'such a view narrows the ambit of section 56(2) and expanding the exclusion list provided in the said section. If that was the intention of the legislature, the exclusions provided in Section 56(2) of the Act should have specifically mentioned that only capital assets are covered and all others are excluded. Nothing of such sort, is mentioned in the aforesaid section. Hence, all immovable properties, whether or not capital assets, are subject to tax under section 56(2) of the Act. The provisions of section 56(2) are wider and cannot be restricted by any means, except as specified under the Act. Therefore, the difference amount of Rs.27,77,570 being the value as per Section 47A(1) of the Act requires thorough examination vis-a-vis the provisions of section 56(2)(vii) of the Act. As this aspect was completely omitted to be looked upon by the AO while passing the scrutiny assessment order. In view of the discussions above, the order of assessment passed by the AO u/s.143(3) dated 27.09.2019 is made without verification of the facts. The order so made, suffers in as much as it is erroneous and prejudicial to the interest of revenue, requiring an intervention to cure the order made erroneous and prejudicial to the interest of revenue.

6. In order to remedy the said error in the order of assessment in the instant case made on 27.09.2019 for the assessment year 2017-18, the recourse would be to resort to provisions of sec.263 of the Act. Accordingly,

the order of the AO dated 27.09.2019 for the assessment year 2017-18 in the case of the captioned assessee is, set aside, in exercise of the powers vested in me u/s. 263 of the Act.

7. The Assessing Officer, is hereby, directed to re-do the assessment afresh with regard to the above issue of invoking the provisions of section 56(2)(vii) of the Act after verification of the facts discussed above. The AO may satisfy himself in accordance with law and come to a logical conclusion in respect of the issue and after due satisfaction in accordance with law, shall proceed with the assessment and pass appropriate orders in the assessee's case. The Assessing Officer shall give adequate opportunity of being heard to the assessee in this regard before passing the fresh assessment order. The Assessee is also given yet another opportunity to present its case and the assessee shall provide the relevant details with material evidence, so as to facilitate the Assessing Officer to arrive at a logical conclusion."

4. On being aggrieved, the assessee carried the matter in appeal before the Tribunal. The first argument of the Id. Counsel for the assessee is that the return filed by the assessee was selected for scrutiny under CASS "limited scrutiny" category in respect of cash deposited during demonetisation period. It was further submission that the agricultural land on 14.07.2016 was much prior to demonetisation. Therefore, when the case of the assessee was selected for only limited scrutiny, i.e., cash deposited in the bank account, the Assessing Officer cannot examine the agricultural land purchased much prior to cash deposited. Therefore, the order passed by the Assessing Officer cannot be said that the same is erroneous and prejudicial to the interest of Revenue. He also pointed out by referring to para 3 of CBDT circular F.No. 225/402/2018/ITA.II dated 28.11.2018 that the Assessing Officer cannot examine except what is provided in the above circular at para 3.

The relevant para is reproduced as under:

“3. The matter has been considered by the Board. In order to enable proper enquiry/investigation in pending ‘Limited Scrutiny’ cases which were selected through CASS cycles of 2017 and 2018, where credible material or information has been/is provided by any law-enforcement/intelligence/regulatory authority or agency regarding tax-evasion by an assessee, it has been decided by the Board that issues arising from such information can also be examined during the course of conduct of assessment proceedings in such ‘Limited Scrutiny’ cases with prior administrative approval of the concerned Pr. CIT/CIT.”

Therefore, the Id. Counsel for the assessee has argued that the order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of the Revenue. Further, the Id. Counsel relied on the decision in the case of Subbanadar Chandra Sekar v. ITO in ITA No. 612/Chny/2021 dated 06.12.2022 and submitted that the issue is squarely covered in favour of the assessee.

5. On the other hand, the Id. DR has submitted that the cash deposit and purchase of agricultural land are inter-linked and therefore, the entire activity comes within the scope of limited scrutiny. Therefore, the Id. PCIT has rightly invoked jurisdiction under section 263 of the Act and strongly supported the revision order passed by the Id. PCIT.

6. We have heard both the sides, perused the materials available on record and gone through the orders of the authorities below. It is an admitted fact that the case of the assessee was selected for scrutiny

under CASS “LIMITED SCRUTINY” category to examine the deposits made during demonetisation. The assessee purchased the agricultural land on 14.07.2016, which is much prior to the cash deposits during demonetisation. Therefore, the land purchased by the assessee has nothing to do with the cash deposits made during demonetisation and both are different. Therefore, the Assessing Officer has only examined cash deposited during demonetisation correctly. As per para 3 of the CBDT circular, referred hereinabove, the Assessing Officer cannot proceed further to examine except what is provided in para 3 of the circular. Therefore, the order passed by the Assessing Officer cannot be said that it is erroneous and prejudicial to the interest of the Revenue. On an identical issue in similar facts and circumstances, by considering the CBDT circular, the Coordinate Benches of the Tribunal has held as under:

“Our findings and Adjudication

6. *The undisputed facts that emerge are that the issues which have been flagged by Ld. Pr. CIT to seek revision could not have been, otherwise, examined by Ld. AO since the case was selected under ‘limited scrutiny’ to verify the genuineness of capital gains / losses. The issues lagged for ‘limited scrutiny’ was duly examined and verified by Ld. AO. To examine other issues, Ld. AO was bound by CBDT Instruction No. F.No.225/402/2018/ITA.II dated 28.11.2018 which, inter-alia, provide as under: -*

Under CASS cycles 2017 and 2018, some of the cases were selected for scrutiny as a ‘Limited Scrutiny’ case. In ‘limited Scrutiny’ cases, Assessing Officer cannot travel beyond the issue(s) for which the case was selected. The idea behind such a stipulation is to enforce checks and balances upon powers of an Assessing Officer to do fishing and roving enquiries in cases under ‘Limited Scrutiny’.

2. In this regard, several representations have been received in the Board from the field authorities that in several cases under 'Limited Scrutiny', information pointing out specific tax-evasion for the relevant year, given by any law-enforcement/ intelligence/regulatory authority or agency is available with the concerned Assessing Officer, however, in view of the restrictive nature of enquiry/investigation which can be made in 'Limited Scrutiny' cases, the same presently cannot be acted upon.

3. The matter has been considered by the Board. In order to enable proper enquiry/investigation in pending 'Limited Scrutiny' cases which were selected through CASS cycles of 2017 and 2018, where credible material or information has been/is provided by any law-enforcement/intelligence/regulatory authority or agency regarding tax-evasion by an assessee, it has been decided by the Board that issues arising from such information can also be examined during the course of conduct of assessment proceedings in such 'Limited Scrutiny' cases with prior administrative approval of the concerned Pr. CIT/CIT.

4. It is pertinent to mention that unlike CASS 2015 and 2016 cycles, where consideration of any additional issue lead to the conversion of case to 'Complete Scrutiny' as laid down in Instruction No. 5/2016 dated 14.07.16, the pending 'Limited Scrutiny' cases of CASS 2017 and 2018 cycles would not be taken up for 'Complete Scrutiny' as the present directive is only to facilitate consideration of those issues wherein specific information of tax-evasion has been furnished by any law-enforcement/intelligence/regulatory authority or agency. Therefore, in such 'Limited Scrutiny' cases, Assessing Officer shall not expand the scope of enquiry/investigation beyond the issue(s) on which the case was flagged for 'Limited Scrutiny' & issue arising from nature of information mentioned in para 2 and 3, above.

5. The following procedure shall be adopted while examining the additional issue:

- i. The Assessing Officer shall duly record the reasons for expanding the scope of 'Limited Scrutiny' to the extent mentioned in para 2 and 3, above;
- ii. The same shall be placed before the Pr. CIT/CIT concerned and upon his approval, further issue can be considered during the assessment proceeding;
- iii. The Assessing Officer shall issue an intimation to the assessee concerned that additional issue would also be considered during the course of pending assessment proceeding;

iv. *To ensure proper monitoring in these cases, provisions of section 144A of the Income-tax Act, 1961 may be invoked in suitable cases. Further, to prevent fishing and roving enquiries in these cases, it is desirable that these cases are invariably picked up for Review/Inspection by the administrative authorities.*

6. *The above directive shall be applicable from the date of its issue and shall apply to the pending 'Limited Scrutiny' cases which were selected under the CASS 2017 and 2018 cycles. It is reiterated that the grounds mentioned in para 3 above are the only grounds on which a 'Limited Scrutiny' case of CASS 2017 and 2018 cycles can be expanded in its scope and that too only to the extent of the issues referred to by the law-enforcement/intelligence/ regulatory authority or agency .*

7. *It may be brought to the notice of all for necessary compliance.*

Upon perusal of para-3 of above instructions, it could be seen that the scope of limited scrutiny for CASS cycles 2017 and 2018 could be widened only upon receipt of credible material or information from any law enforcement / intelligence / regulatory authority or agency regarding tax-evasion by an assessee. In such a case, the issues arising from such information could also be examined during the course of conduct of assessment proceedings in such 'limited scrutiny' cases with prior administrative approval of the concerned Pr. CIT/CIT. However, in the present case, we find that there is no such credible material or information which would justify widening the scope of limited scrutiny. Therefore, Ld. Pr. CIT, in our considered opinion, could not term the assessment order as erroneous or prejudicial to the revenue since the flagged issues, could otherwise be not examined by Ld. AO during the course of regular assessment proceedings.

7. *Our view is duly supported by the recent decision of this Tribunal in Mr. Yuvaraj vs. ITO (ITA No.1722/Chny/2019 order dated 07.03.2022) wherein the bench held as under: -*

6. *We have heard both the parties, perused material available on record and gone through orders of the authorities below. We find that the assessment for the impugned assessment year has been taken up for limited scrutiny to verify large cash deposits into savings bank account and the Assessing Officer has completed assessment after verifying cash deposits in savings bank account and has made additions, when the assessee was unable to explain source for part of cash deposits. It is an admitted position of law that in limited scrutiny assessments, scope of verification is limited to the issues mentioned in the notice issued under CASS system. The Assessing Officer cannot*

travel beyond the issues on which assessment has been taken up for scrutiny. Therefore, once the Assessing Officer does not have power to go beyond the issues on which he has taken up case for scrutiny, then obviously, the learned PCIT cannot term the assessment order passed by the Assessing Officer as erroneous, insofar as it is prejudicial to the interests of revenue on issues other than the issue taken up by the Assessing Officer in scrutiny assessment proceedings. In this case, on perusal of materials available on record, we find that the learned PCIT has revised assessment order on the issues other than the issue considered by the Assessing Officer in assessment proceedings. Therefore, we are of the considered view that the learned PCIT has exceeded her jurisdiction in examining issues other than the issues which is subject matter of limited scrutiny assessment proceedings before the Assessing Officer. Hence, we are of the considered view that revision order passed by the learned PCIT u/s.263 of the Act is invalid and not sustainable. Hence, we quash order passed by the learned PCIT u/s.263 of the Act.

Similar is the decision of Kolkata Tribunal in Binod Kumar Mahato vs. Pr. CIT (ITA No.2173/Kol.2018 dated 24.02.2021), a copy of which has been placed on record. Similar is the ratio of other decisions of other benches of Tribunal, the copies of which are on record.

8. *The decision of Chennai Tribunal in M/s Sahayamatha Salterns Pvt. Ltd. vs. DCIT (ITA No.1498/Chny/2019 dated 11.12.2019), as relied upon by revenue, is factually distinguishable. Upon perusal of para-4 of the order, it could be seen that Ld. AO failed to consider the information passed on to him by other Income Tax Authority regarding on-money consideration and therefore, the revision was held to be justified. The same is not the case here.*

9. *Therefore, on the facts and circumstances of the case, the revision of the order could not be upheld in the eyes of law. By quashing the same, we allow the appeal of the assessee.*

10. *The appeal stands allowed in terms of our above order.”*

6.1 By considering the facts and circumstances of the case and also by respectfully following the decision of the Coordinate Benches of the Tribunal, the revision order passed by the Id. PCIT under section 263 of the Act cannot be upheld in the eyes of law. Accordingly, we quash the revision order passed under section 263 of the Act and allow the appeal

of the assessee.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 13th January, 2023 at Chennai.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 13.01.2023

Vm/-

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.