

## **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.163/CTK/2020

(निर्धारण वर्ष / Assessment Year :2015-2016)

Kendrapara Urban Co-operative Bank Ltd., College Square, Tinimuhani, Kendrapara-754211	Vs	Pr.CIT, Cuttack
PAN No. :AAATK 8347 E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारित की ओर से /Assessee by	:	Shri P.C.Sethi, Advocate
राजस्व की ओर से /Revenue by	:	Shri M.K.Gautam, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	30/01/2023
घोषणा की तारीख/Date of Pronouncement	:	30/01/2023

### **आदेश / ORDER**

#### **Per Bench :**

This is an appeal filed by the assessee against the order of the Id Pr.CIT, Cuttack, dated 24.03.2020, passed in DIN & Order No.ITBA/COM/F/17/2019-20/1026884702(1) for the assessment year 2015-2016.

2. The appeal of the assessee is barred by 8 days. The assessee through its Secretary has filed an application dated 13.07.2020 stating therein sufficient reasons for condonation of delay, to which Id. CIT-DR did not object. In view of the above, delay of 8 days in filing the present appeal is condoned and the appeal of the assessee is heard finally.

3. It was submitted by the Id. AR that the original assessment in the case of the assessee was completed u/s.143(3) of the Act on 20.11.2017. It was the submission that the assessment was a limited scrutiny

assessment and the issues raised in the assessment are (i) interest expenses; and (ii) sales turnover mismatch. Ld.AR drew our attention to the office note attached along with the assessment order wherein the AO has mentioned the following reasons for the limited scrutiny :-

*01. High Interest expenditure against new capital added in work in progress or addition made to fixed assets.*

*02. Higher turnover reported in Service Tax Return compared to ITR and assessee has deposited large amount of cash in savings bank account.*

*03. Large interest expenses relatable to exempt income (u/s.14A)*

4. It was the submission that the Id. Pr.CIT invoked his powers u/s.263 of the Act for the purpose of examining the issues in relation to the exemption under the provision of bad and doubtful debts u/s.36(1)(viiia) of the Act, ii) Rs.50,000/- being the provision for election and (iii) details of the interest paid to the customers on which no TDS has been made and consequence of the provisions of Section 40(a)(ia) of the Act. It was the submission that the original assessment being a limited scrutiny, the powers of the Id. Pr.CIT in respect of the revision was limited to the issues raised in the limited scrutiny and the issues as raised by the Id. Pr.CIT was not within the purview of the issues raised in the limited scrutiny and consequently the revision u/s.263 of the Act is liable to be annulled.

5. Ld. AR placed reliance on the decision of the coordinate bench of the Tribunal in the case of Shark Mines & Minerals Pvt. Ltd., passed in ITA No.128/CTK/2019, order dated 18.08.2022, wherein in para 10 to 13 which has been held as follows :-

*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.

6. In reply, Id. CIT-DR has filed his written submissions as under :-

*This is an assessee's appeal against the order of Pr. CIT, Cuttack u/s.263 of the Act passed on 24.03.2020. As regards the issue pertaining to interest expenses, the A.O. had issued notice dated 26.07.2016 u/s.143(2) of the Act. The paper book filed by the Id. AR of the appellant does not show/contain any questionnaire issued by the A.O. and consequently reply in response to said questionnaire. Thus the A.O. had not carried out any enquiry in this regard. Thus it is clear that the A.O. has not applied his mind to the facts of the case.*

2. As regards the claim u/s.36(1)(vii), provision for election and non-deduction of TDS on interest payments, 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 Pr. CIT, Cuttack has passed revision order on the issues which were not the part of limited scrutiny. In this regard, reliance is placed on the following decisions:

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 th 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. CIT 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. CIT 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 ITAT 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 (Se). 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 ITAT 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 enquire 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 proposition 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-8 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 char'i'ge 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 mismatch-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, hereby directs that the cases selected for scrutiny during the Financial Year 2014-2015 under CASS, on the basis of either AIR data or CIB 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 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.*

*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 Jt. 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 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 judicial precedent and circumstances of the cases being identical, the order passed by the Pr. CIT, Cuttack needs to be upheld.*

7. It was submitted by the Id. CIT-DR that in view of the decision of the coordinate bench of the Tribunal in the case of Sushant Kumar Choudhry in ITA No.226/CTK/2019, order dated 05.10.2019 as also the decision of the coordinate bench of this Tribunal in the case of Maa Tarini Industries Ltd. passed in ITA No.292/CTK/2019, dated 17.03.2020, Id. Pr.CIT did have the powers to invoke the provisions of Section 263 of the Act on issues which are not considered in a limited scrutiny assessment also. It was the submission that the order passed u/s.263 of the Act is liable to be upheld.

8. We have considered the rival submissions. Admittedly, the original assessment is a limited scrutiny assessment. The decision in the case of Sushant Kumar Choudhry (supra) and in the case of Maa Tarini Industries Ltd. (supra) and the decision of the Third Member Bench of the Tribunal in the case of Chandragiri Construction Co., reported in 21 taxmann.com 167 (TM) has already been discussed by this bench in the case of M/s Shark Mines & Minerals Pvt. Ltd. (supra), therefore, the prayer of the Id.

CIT-DR that in the event the Bench does not follow the decision in the case of Sushant Kumar Choudhry (supra) and in the case of Maa Tarini Industries Ltd. (supra), the matter should be referred to a larger bench, no more survives. The decisions in the case of Sushant Kumar Choudhry (supra) and in the case of Maa Tarini Industries Ltd. (supra) were clearly distinguishable and has categorically distinguished, especially in regard to the case of Sushant Kumar Choudhry (supra). The coordinate bench of the Tribunal in the case of M/s Shark Mines & Minerals Pvt. Ltd. (supra) has taken a substantial reference to the Instruction issued by the CBDT in No.7/2014, dated 26.09.2014 and Instruction No.20/2014, dated 19.12.2015, wherein it has been categorically mentioned that in a case of limited scrutiny the AO cannot go beyond the issues which has been directed under the limited scrutiny. This being so, as the AO is barred from entering into issues in the limited scrutiny, which are beyond the questions raised in the limited scrutiny, it cannot be said that the order passed by the AO is erroneous or prejudicial to the interest of revenue. The order of the AO can become erroneous and prejudicial to the interest of revenue only when the AO has not looked into the issues where limited scrutiny has been directed. That is not the case here. The Id. Pr.CIT has entered into the issues which are beyond the purview of the issues raised in the limited scrutiny. This being so, respectfully following the principles laid down by the coordinate bench of this Tribunal in the case of M/s Shark Mines & Minerals Pvt. Ltd. (supra), the order u/s.263 passed by the Id. Pr.CIT stands quashed.

9. The above view of ours also finds supports from the decision of the ITAT Mumbai Bench of the Tribunal in the case of M/s Su-Raj Diamond Dealers Pvt. Ltd. passed in ITA No.3098/Mum/2019, order dated 27.11.2019, wherein it has been held in paras 6, 7 & 8 are as follows :-

*6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. Admittedly, the case of the assessee was selected for limited scrutiny through CASS for two reasons viz. (i). Large other expenses claimed in the P&L A/c.; and (ii). Low income in comparison to High Loans/advance /Investment in shares. Insofar the fact that the case of the assessee was selected for limited scrutiny for the aforesaid reasons is concerned, the same as observed by us hereinabove is not disputed and is clearly discernible from the order passed by the Pr. CIT under Sec. 263 of the Act. In fact, we find, that the Pr. CIT in his order had categorically observed that the case of the assessee was not selected for examination on the issue relating to „closing stock“, but was selected for limited scrutiny for the aforesaid two reasons viz. (i). Large other expenses claimed in the P&L A/c.;and (ii). Low income in comparison to High Loans/advance /Investment in shares. We find that as per the CBDT Instruction No. 20/2015, dated 29.12.2015, scrutiny in cases selected through Computer Aided Scrutiny Selection (CASS) is to be confined only to the specific reasons/issues for which the case has been picked up for scrutiny. In order to appreciate the issue under consideration, we deem it fit to cull out the CBDT instruction No. 20/2015, dated 29.12.2015., which reads as under:*

*" INSTRUCTION NO. 20/2015, DATED: 29-12-2015 29/12/2015  
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 26.09.2014 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 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 Ahmedabad},

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.

6. Hindi version to follow (F.No 225/269/2015-ITA.II) (Ankita Pandey) Under Secretary to the Government of India"

Now, the case of the assessee before us was selected for limited scrutiny through CASS, for the reasons, that there were viz. (i). Large other expenses claimed in the P&L A/c.; and (ii). Low income in comparison to High Loans/advance /Investment in shares.. Accordingly, it can safely be concluded that the assessment framed by the A.O fell within the realm of the limited purpose for which its case was selected for scrutiny assessment viz. viz. (i). Large other expenses claimed in the P&L A/c.; and (ii). Low income in comparison to High Loans/advance /Investment in shares.

7. As observed by us hereinabove, as per the CBDT instruction No. 20/2015, dated 29.12.2015, in a case which had been selected for scrutiny assessment on the basis of Computer Aided Scrutiny Selection ('CASS'), the scrutinising of such case would be confined only to the specific reasons/issues for which the case has been picked up for scrutiny. However, the case may thereafter be taken up for complete scrutiny with the approval of the administrative Principal commissioner of income-tax/Commissioner of income-tax, where it is felt that apart from the CASS information there is potential escapement of income of more than Rs.10,00,000/-. Accordingly, the CBDT had in clear and unequivocal terms clarified that for broadening the scope of a case selected for limited scrutiny as per CASS information the approval of the administrative Principal commissioner of income-tax/Commissioner of income-tax would be required. In the case before us, it is an admitted fact that the case of the assessee was selected for "limited scrutiny" under CAS ,for the reasons, viz. (i). Large other expenses claimed in the

*P&L A/c.; and (ii). Low income in comparison to High Loans/advance /Investment in shares. In fact, it is neither a fact nor the case of the revenue that the said case was thereafter taken up for complete scrutiny with the approval of the administrative commissioner. In the backdrop of the aforesaid facts, we are of the considered view that as the scope of the assessment framed by the A.O under Sec. 143(3), dated 08.12.2016 was circumscribed by the limited reasons for which the case of the assessee was selected for scrutiny assessment, therefore, he was absolutely divested of his powers from traversing on issues which did not fall within the realm of the said limited purpose for which the said case was selected for being scrutinised.*

*8. We shall now in the backdrop of our aforesaid observations deliberate on the validity of the order passed by the Pr. CIT under Sec. 263. As observed by us hereinabove, the Pr. CIT had held the order passed by the A.O under Sec. 143(3), dated 08.12.2016 as erroneous, in so far it was prejudicial to the interest of the revenue, for the reason, that he had failed to carry out proper investigation as regards the issue of valuation of the „closing stock“ as reflected in the audited accounts of the assessee. We are of a strong conviction that now when the case of the assessee was selected for limited scrutiny for the reasons viz. (i). Large other expenses claimed in the P&L A/c.; and (ii). Low income in comparison to High Loans/advance /Investment in shares, therefore, no infirmity could be attributed to the assessment framed by the A.O on the ground that he had failed to deal with other issues which though did not fall within the realm of the limited reasons for which the case was selected for scrutiny assessment. In other words, the Pr. CIT in the garb of his revisional jurisdiction u/s 263 cannot be permitted to traverse beyond the jurisdiction that was vested with the A.O while framing the assessment. In sum and substance, revisional jurisdiction cannot be exercised for broadening the scope of jurisdiction that was vested with the A.O while framing the assessment. As a matter of fact, what cannot be done directly cannot be done indirectly. Accordingly, in terms of our aforesaid observations, we are of the considered view that as the A.O had aptly confined himself to the issues for which the case of the assessee was selected for limited scrutiny, therefore, no infirmity can be attributed to his order, for the reason, that he had failed to dwell upon certain other issues which did not form part of the reasons for which the case was selected for limited scrutiny under CASS. We thus not being able to concur with the view taken by the Pr. CIT that the order passed by the A.O under Sec. 143(3), dated 08.12.2016 is erroneous, therefore, „set aside“ his order and restore the order passed by the A.O. As we have quashed the order passed by the Pr. CIT under Sec. 263 on the ground of invalid assumption of jurisdiction by him, therefore, we refrain from adverting to and therein adjudicating the contentions advanced by the Id. A.R on the merits of the case, which thus are left open.*

10. Also, respectfully following the decision of the Mumbai Bench of the Tribunal in the above case, the order passed by the Id. Pr.CIT in the case of the present assessee stands quashed.

11. In the result, appeal of the assessee stands allowed.

Order dictated and pronounced in the open court on 30/01/2023.

**Sd/-**

(अरुण खोड़पिया)  
**(ARUN KHODPIA)**

लेखा सदस्य/ **ACCOUNTANT MEMBER**

**Sd/-**

(जार्ज माथन)  
**(GEORGE MATHAN)**

न्यायिक सदस्य / **JUDICIAL MEMBER**

**कटक** Cuttack; दिनांक Dated 30/01/2023

*Prakash Kumar Mishra, Sr.P.S.*

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

1. अपीलार्थी / The Appellant-  
Kendrapara Urban Co-operative Bank Ltd.,  
College Square, Tinimuhani,  
Kendrapara-754211
2. प्रत्यर्थी / The Respondent-  
Pr.CIT, Cuttack
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**