

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No.365/Chny/2022
निर्धारण वर्ष/Assessment Year: 2017-18

Shri Govindasamy Suresh,
No. 2/3, Brindhavathi Illam, 3rd Street,
Thirupur Kumaran Nagar,
Thesumukipet, Thirukalukundram,
Kanchipuram, 603109 Tamil Nadu.
[PAN:DUCPS4984N]

Vs. The Assistant Commissioner of
Income Tax,
Non Corporate Circle 22(1),
Tambaram, Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri S.P. Chidambaram, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri S. Senthil Kumaran, CIT
सुनवाई की तारीख/ Date of hearing : 22.12.2022
घोषणा की तारीख /Date of Pronouncement : 31.01.2023

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, Chennai dated 23.02.2022 relevant to the assessment year 2017-18 passed under section 263 of the Income Tax Act, 1961 ["Act" in short].

2. Brief facts of the case are that the assessee filed the return of income for the assessment year 2017-18 on 30.10.2017 admitting total income of ₹.16,38,580/-. The case was selected for scrutiny under CASS

- "LIMITED SCRUTINY" category. The reason is to examine the "Cash deposit during the year". 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 20.05.2019 was issued to the assessee calling for details. The assessee has explained the details of sources of fund for cash deposits before the Assessing Officer. Based on the clarifications and submissions of documents, the Assessing Officer accepted the returned income of the assessee and 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 following grounds:

"2.9 As the assessee is not one of the entities authorised to accept SBNs during demonetisation period in exchange for goods /service, and as the assessee claimed that he had carried out valid sales during the demonetisation period, such sales pre-suppose the receipt of price in legal tender currency only. Any other claim to the contrary is not acceptable.

2.10 In this case, the assessee deposited Rs.44,90,500/- in old SBN during demonetisation period in excess of the cash on hand at the opening of 09.11.2016. The possibility that they represented undisclosed receipts of pre-demonetisation period was not even considered or examined by the Assessing Officer.

3. In the Profit and Loss account of the proprietorship concern, the assessee debited Rs.6,59,462/- towards interest on vehicle loan, Rs.6,25,233/- towards interest on Overdraft and Rs.5,90,391/- towards interest on HDB Finance. From the Schedule 2 : Secured loans of the Balance Sheet, it is ascertained that the assessee obtained vehicle loan from M/s. Sundaram Finance, Overdraft facility from Canara Bank and secured loan from

M/s.HDB Finance Services. In clause 34(a) of Form 3CD, the Chartered Accountant certified that the assessee had not deducted tax at source. Since the interest payments to persons other than Bank attracts the provisions of Section 19A, 30% of the interest payment of Rs. 12,49,853/- may require disallowance as per Section 40(a)(ia). This aspect was not examined by the Assessing Officer.

4. The present case was selected for limited scrutiny to examine the issue mentioned supra. The Board's Instruction No.5/2016 dated 14.07.2016, lays down the procedure and limits relating to "revenue potential cases" where the Assessing Officer can, based on his reasonable view of the possibility of under assessment of income, convert the 'limited' lo 'complete' scrutiny. The approval of the PCIT is necessary for such conversion. The Assessing Officer, in spite of the available facts on record did not send the proposal to PCIT for taking up the case for complete scrutiny. It is clear that the case was not converted to "complete' scrutiny even though credible information indicating under-assessment was available on record."

Since the assessee not filed any written submissions, the Id. PCIT has passed the exparte revision order directing the Assessing Officer to redo the assessment by observing as under:

"7. The case was posted for hearing on 21.03.2022 at 04.30 PM vide DIN & Notice No. ITBA/REV/F/REV1/2021-22/1040883008(1) dated 16.03.2022. The assessee has not responded to the said notice till date. It is verified from the ITBA Portal that the assessee has received the mail. No written submission has been filed. It appears that the assessee has nothing to offer by way of explanation with regard to the issues raised in the show cause notice dated 16.03.2022. Hence an exparte order u/s.263 is hereby passed based on the materials available on record.

8. In the light of the facts and details discussed supra, this is considered a fit case to invoke the provisions of Sec. 263 of the Act since the order u/s.143(3) dated 27.09.2019 is considered to have been passed without making the necessary enquiries and verifications and without appropriate correlation of facts and evidences on record. The said order is, therefore, considered erroneous in so far as it is prejudicial to the interest of the revenue within the meaning of Sec.263 of the I.T. Act, 1961. Accordingly, the assessment order is hereby set aside u/s 263 of the I.T. Act, with a direction to the Assessing Officer to examine the aspects, as discussed supra and pass a fresh order within the stipulated time, after granting opportunity to the assessee of being heard. The assessee can furnish documents which were not available at the time of assessment in the records of the Assessing Officer for fresh examination."

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 to examine the “Cash deposit during the year”. It was submitted that the assessee has furnished complete details including various bank accounts of the assessee, postal address of the suppliers and month-wise cash deposit details during the financial year 2016-17 before the Assessing Officer during the course of assessment proceedings and a copy of the same are brought on record. 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 vehicle loan interest, interest on overdraft and other interest payments debited in the profit and loss account. 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 Subbunadar 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 strongly supported the revision order passed by the Id. PCIT. Further, the Id. DR has submitted that cash deposited during demonetisation was not verified by the Assessing Officer. He further relied on the order passed by the Id. PCIT at para 2.4 and submitted that various cash deposits made by the assessee were not examined by the Assessing Officer and therefore, the order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue. The Id. DR has also relied on the decision in the case of Vaishnavi Bullion Private Limited [TS-914-ITAT-2022(HYD)].

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 “Cash deposit during the year”. The vehicle loan interest, interest on overdraft and other interest payments debited in the profit and loss account nothing to do with the cash deposits made during the year. Therefore, the Assessing Officer has only examined cash deposited during year for which the case was selected under CASS – Limited Scrutiny 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 in the case of Subbunadar Chandra Sekar v. ITO (supra), 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 in the case of Subbunadar Chandra Sekar v. ITO (supra) , the revision order passed by the Id. PCIT under section 263 of the Act cannot be upheld in the eyes of law. The case law relied on by the Id. DR has no application to the facts of the present case. 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 31st January, 2023 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 31.01.2023
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.