

**THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'B', NEW DELHI**

Before Smt Diva Singh, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 4916/Del/2019 : Asstt. Year: 2014-15

Sanjay Gupta, E-24, Preet Vihar, New Delhi-110092 (APPELLANT)	Vs.	ACIT, Circle-59(1), New Delhi (RESPONDENT)
PAN No. AAHPG3047Q		

**Assessee by : Sh. Rajat Jain, CA &
Sh. Akshat Jain, CA**

Revenue by : Sh. Nitin Kumar Jaiman, Sr. DR

Date of Hearing: 11.04.2023

Date of Pronouncement: 19.04.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-37, New Delhi dated 15.04.2019.

2. The assessee has raised the following grounds of appeal:

"1. On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eyes of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in not admitting the additional grounds raised by the assessee.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in passing the order without affording adequate opportunity of being heard to the assessee.

4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite the fact that the order has been passed by the AO without communicating the reasons for initiating limited scrutiny.*

5. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite the fact that the same having been made going beyond the scope of limited scrutiny, without complying the statutory procedure laid down in this regard.*

6. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 19,02,413/- for transactions in the scrip of Jolly Plastic in which scrip the appellant did not enter into any transaction at all during the previous year ended 31.03.2014.*

7. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition made by the AO on account of amount received on sale of shares of Rs.19,02,413/- holding the same to be not genuine.*

8. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite the fact that the assessee had placed on record all evidences and material to prove the genuineness of the transaction.*

9. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 19,02,413/- by indulging in surmises without bringing on record any direct evidence against the assessee, only on the basis of presumptions and assumptions.*

10. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite the fact that the transactions were done through proper banking channels and as per the rules and regulations of the Stock Exchange.*

11. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition by misinterpreting the financials of the company whose shares were sold by the assessee.*

12. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in not appreciating the fact that the subject shares were allotted to the appellant in IPO and the sale of those shares was executed on the screen based platform of the Stock Exchange through a Stock Broker registered with SEBI after holding the shares for more than twelve months from the date of acquisition.*

13. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in not holding that the long term capital gain on sale of shares is exempt from tax u/s 10(38) of the Income Tax Act.*

14. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in making addition of Rs. 1,50,000/- being cost of the shares acquired in the IPO and paid by the appellant in an earlier assessment year by account payee cheque out of appellant's tax paid income through banking channels.*

15. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 19,02,413/- despite the fact that the addition has been made by the AO relying on the report of the investigation wing without any application of his own mind.*

16. *On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the addition made by the AO despite the same having been made on the basis of extraneous and irrelevant material collected at the back of the assessee / appellant without giving him an opportunity to rebut the same.*

17. *On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the addition made by the AO despite the same having been made on the basis of statement of outside*

parties recorded without giving the assessee / appellant an opportunity to cross examine."

3. The assessee is an individual engaged in the business of share trading under the name and style of M/s Nirmal Commodities. The assessee filed return of income on 30.07.2014 declaring income at Rs.2,78,23,780/-.

4. At the outset, the Id. AR raised the ground no. 5 pertaining to the jurisdiction of the AO going beyond the scope of limited scrutiny. The Id. DR could not submit any evidence regarding the permission of Id. PCIT has been taken to convert the limited scrutiny case to complete scrutiny as per the directions of the CBDT. The said directions of CBDT are as under:

Instruction No. 20/2015

Government of India

Ministry of Finance

Department of Revenue

Central Board of Direct Taxes

North Block, New Delhi, the as" of December, 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 assessee's 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.

6. Hindi version to follow.

Sd/-

(Ankita Pandey)

Under Secretary to the Government of India

(F.No. 225/269/2015-ITA.II)

5. Since, the AO failed to adhere to the instructions given by the CBDT, the appeal of the assessee deserves to be allowed on this ground alone.

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

Order Pronounced in the Open Court on 19/04/2023.

Sd/-

(Diva Singh)
Judicial Member

Dated: 19/04/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR