

**IN THE INCOME TAX APPELLATE TRIBUNAL "GAUHATI" BENCH,  
VIRTUAL HEARING AT KOLKATA**

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. Nos. 239 & 240/Gau/2019**  
Assessment Years: 2015-16 & 2016-17

|  |     |                          |
|--|-----|--------------------------|
| Anand Poddar<br>C/o Rahul Raj Jain & Co. H No.15, 1 <sup>st</sup><br>floor, Bye Lane-2, Shaktigarh Path,<br>Bhangagarh, G. S. Road, Assam-<br>781005.<br>(PAN: ADVPP9509R) | Vs. | DCIT, Circle-4, Guwahati |
| Appellant  |     | Respondent               |

|                       |                                 |
|-----------------------|---------------------------------|
| Date of Hearing       | 09.08.2023                      |
| Date of Pronouncement | 22.09.2023                      |
| For the Appellant     | Shri Akkal Dudhwewala, Advocate |
| For the Respondent    | Shri Soumendu Sekhar Das, DR    |

**ORDER**

**Per Shri Rajesh Kumar, AM**

Both these appeals preferred by the assessee against the separate orders of Ld. CIT(A), Guwahati-2, Guwahati dated 25.03.2019 for AYs 2015-16 & 2016-17.

2. First, we take up ITA No. 239/Gau/2019. Issue raised in ground no. 1, 2 and 3 are against the order of Ld. CIT(A) upholding the order passed by the AO u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act") which is invalid and void ab initio.

3. The facts in brief are that assessee filed his return of income on 29.03.2016 showing total income at Rs.40,24,780/-. The case of the assessee was selected for limited scrutiny under CASS in respect of three items namely, sales turnover mismatch, refund claim and business loss. The assessment was completed by the AO by making addition of Rs.39,78,068/- by disallowing the claim of interest u/s. 24(b) of the Act besides, making other additions. It is pertinent to note that the scope of scrutiny was not converted into complete scrutiny and the assessment was framed accordingly, the assessment order dated 12.07.2017 was passed u/s. 143(3) of the Act. It is noteworthy that the interest claim u/s 24b of the Act was not subject matter of limited scrutiny. The said interest is paid on taken to repay existing loan taken for the construction of property.

4. The Ld. Counsel for the assessee vehemently submitted before the Bench that this case of the assessee was selected for limited scrutiny. Ld. Counsel drew the attention of the Bench to the notice issued u/s. 143(2) of the Act for limited scrutiny which provides for three reasons namely, sales turnover mismatch, refund claim and business loss. The Ld. Counsel for the assessee submitted that the limited scrutiny was not converted into complete scrutiny by the AO. However, during the course of assessment proceeding, he exceeded his jurisdiction in making the assessment in respect of interest claimed by the assessee u/s. 24(b) of the Act to Rs.39,78,068/-. The Ld. A.R. submitted that the AO has not converted the limited scrutiny into a broad scrutiny but made disallowance in respect of interest claimed u/s 24(b) of the Act thereby rendering the assessment as nullity which deserved to be quashed on this score alone. The Ld. A.R referred to the instruction NO. 5/2016 of CBDT dated 14.07.2016 taking the bench through the procedure to be followed for conversion into complete scrutiny in a case which was originally earmarked for limited scrutiny. The ld AR contended that the AO was required to form a reasonable view that there was a possibility of under-assessment of income if the case was not examined under complete scrutiny. The ld. A.R has referred to para 3 of the instruction which says that while forming the reasonable view the AO would ensure that there exists credible material or information available on record for forming such view and this reasonable view should not be based on mere suspicion, conjecture or unreliable source and there must be a direct nexus between the available material and formation of such view. The Ld. A.R. therefore prayed that the order passed by the AO is bad in law and may kindly be quashed. In defense of his arguments the Ld. A.R. relied on the decision of the Co-ordinate Bench of Chandigarh in the case of Shri Vijay Kumar vs. ITO in ITA No. 434/Chad/2019 for AY 2014-15 dated 12.09.2019. The Ld. A.R submitted that in view of the decisions as referred to above the assessment framed by the AO is bad in law and may kindly be quashed.

5. Ld. Dr on the other hand, relied on the order of AO and contended that this issue was not raised before the Ld. Pro CIT and, therefore, should not be adjudicated at this stage.

6. After hearing the rival contentions, we find that the case of the assessee was selected for limited scrutiny as IS apparent from the notice issued u/s. 143(2) dated 02.08.2016 in which the issue of claim of interest u/s. 24(b) of the Act was not appearing. It is also undisputed that the limited scrutiny has not been converted into complete scrutiny by the AO. In our opinion, the AO has exceeded his jurisdiction in making the addition u/s. 24(b) of the Act. In our view this is incomplete disregard of the Instruction No. 5/2016 issued by CBDT on 14.07.2016 which provides that while proposing to take up complete scrutiny which was fixed for limited scrutiny, the AO shall form a reasonable view that there is a possibility of under-assessment of income if the case is not examined under complete scrutiny and that plea has to be on the existence of the credible material not merely on suspicion and conjecture or unreliable sources. But the present case stands on the much stronger footings as the limited scrutiny has not been converted into broad scrutiny. The case of the assessee finds support from the decision of Co-ordinate Bench of Chandigarh in the case of Shri Vijay Kumar (supra) wherein it has been held as under:

*"3. The main contention of the Ld. Counsel for the assessee is that the Assessing Officer while making the impugned additions has exceeded his jurisdiction. That the case of the assessee was selected for limited scrutiny issue i.e. regarding security transaction. The Assessing Officer could not find any reason to make any addition in respect of issue for which the limited scrutiny was done. However, the Assessing officer made the certain other additions for which the Assessing Officer did not have any jurisdiction.*

*4. The Ld. D.R has been fair enough to admit that the impugned additions have been made by the Assessing Officer on certain other issues, whereas, the case of the assessee was selected for the purpose of limited scrutiny relating to security transactions.*

*5. I find that the additions made by the Assessing Officer, thus, being exceeding his jurisdiction are not sustainable in the eyes of law and the same are accordingly ordered to be deleted. In the result, the appeal of the assessee is hereby allowed."*

Considering the facts of the assessee's case and also the ratio laid down drawn in the above decisions and also the CBDT Instruction No. 5/2016, we are of the considered view that AO has exceeded his jurisdiction by making addition into an issue beyond the scope of limited scrutiny which is in clear violation of mandate given by CBDT in the said Circular and has been held by the Co-ordinate Bench of Chandigarh in the case of Shri Vijay Kumar (supra) to be bad in law. We note that CBDT has in para 4 of the said instruction clarified that in a limited scrutiny, the scrutiny assessment proceedings would initially be confined only to issues and questionnaire, enquiry, investigation etc. would be restricted to such issues in the limited scrutiny. Only upon conversion of such case to complete scrutiny after following the procedure laid down as stated, the AO may examine the issues other than the issues involved in the limited scrutiny but in the present case the procedures were not followed and assessment was conducted in violation of this Instruction. In our opinion, the order passed by the AO is bad in law and cannot be sustained for the said reason. Accordingly we quash the assessment order as nullity and bad in law. Issue raised by the assessee in ground no. 1 is allowed.

7. Even on merit, the claim of the assessee is very strong on merit as the interest u/s 24b of the Act is allowable in terms of provisions of the Act also. We note that even in the scrutiny proceedings in preceding and subsequent assessment years, the said claim of the assessee u/s 24b of the Act has been accepted by the revenue under same facts. A copy of the assessment order for A Y 2014-15 passed u/s. 143 (3) of the Act is placed at page nos. 43 to 47 of the paper book which corroborates the same that there was no disallowance was made u/s. 24(b) of the Act in the assessment framed. In our opinion, it is not open to the revenue to change its stand in the subsequent on ny particular issue unless there is change in the facts and circumstances. In the present case the same claim of the assessee u/s 24b, which has been allowed in the preceding and subsequent assessment years, has been disallowed which is not

sustainable under the Act. The case of the assessee finds support from the decision of the Hon'ble Apex Court in the case of Radhasoami Satsang Vs CIT (193 ITR 321) SC wherein the Hon'ble Apex Court has held the same ratio. Accordingly, even on merit also the appeal of the assessee is allowed.

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8. The issue raised is against the order of Id CIT(A) confirming the disallowance made by the AO in respect of interest on loan u/s 24b of the Act which is similar to one as decided by us in ITA No. 2391Gau/2019 A.Y.2015-16 in para no. 7 supra. Therefore our decision in para 7 above would, mutatis mutandis, apply to this appeal as well. Consequently the order of Id CIT(A) is set aside and the AO is directed to delete the addition. The appeal of the assessee is allowed.

9. In the result, both the appeals of the assessee are allowed.

Order is pronounced in the open court on 22nd September, 2023

Sd/-  
(Sonjoy Sarma)  
Judicial Member

Sd/-  
(Rajesh Kumar)  
Accountant Member

Dated: 22<sup>nd</sup> September, 2023

*JD, Sr. PS*

Copy of the order forwarded to:

1. Appellant–
2. Respondent .
3. CIT(A), Guwahati-2, Guwahati .
4. CIT, ,
5. DR, ITAT, Guwahati,.

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Bench, Kolkata