

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR**

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No.43/JAB/2023
Assessment Year:2015-16

Mrs. Barnali Samanta, 1534 Sundar Vihar, Above Sarathak Store, Indrapuri Colony, Gwarighath Road, Jabalpur. PAN:AXOPS0839E	Vs.	Income Tax Officer, Ward-2(5), Jabalpur.
(Appellant)		(Respondent)

Appellant by	Shri Abhishek Oswal, Advocate
Respondent by	Smt. Garima Chaudhary, CIT (D.R.)
Date of hearing	22/11/2023
Date of pronouncement	30/11/2023

ORDER

PER YOGESH KUMAR U.S.:J.M.

Brief facts of the case are that the return of income was filed declaring total income of Rs.50,000/-. The case of the assessee was selected for limited scrutiny and notice u/s 143(2) was issued. The reason for selection of the case for limited scrutiny under CASS was "Securities Transaction". The assessee participated in the assessment proceedings and produced the relevant documents. The assessment order came to be passed by making addition of Rs.7,25,000/- treating the same as unexplained income of the assessee and added back to the total income of the assessee vide assessment order dated 13/12/2107. The assessee preferred appeal before the CIT(A) and the learned CIT(A) vide order dated 16/01/2023 granted part relief of Rs.2,75,000/- and sustained addition of

Rs.4,50,000/- Aggrieved by the order of learned CIT(A) dated 16/01/2023 the assessee preferred the present appeal raising the following grounds:

- "1. *The learned CIT (A) has erred in law and facts of the case in confirming the order of assessing officer in addition on account of cash deposit u/s 69A for a sum of Rs.4,50,000/- the cash deposit is fully explainable. The same may please be deleted.*
2. *The learned CIT (A) as well as the assessing officer has not taken in to consideration the CBDT Instruction No. 7/2014 Dated- 26.09.2014, As the AO travelled beyond the jurisdiction of limited scrutiny and the Ld CIT has confirmed the same.."*

2. The learned counsel for the assessee vehemently submitted that the assessee fully explained the cash deposit of Rs.4,50,000/- therefore, order sustaining the said addition deserves to be set aside. Further submitted that the learned Assessing Officer has travelled beyond the jurisdiction of the limited scrutiny in contravention of CBDT Instruction No.7/2014 dated 26/09/2014 therefore, calls for the intervention of this Tribunal.

3. Per contra, learned D.R., relying on the order of learned CIT(A) for dismissal of the appeal filed by the assessee.

4. We have heard the parties and perused the materials. The case of the assessee was selected for limited scrutiny for the examination of the issue i.e. "Securities Transaction". The learned Assessing Officer issued the notice u/s 143(2) of the Act calling upon the explanation from the assessee. The assessee through its representative submitted the details which have been examined by the Assessing Officer and the Assessing Officer considered the said issue and not made any addition. The relevant portion of the same is reproduced as under:

- "6. *The assessee has a demat account (No. BS51) with the Religere Securities Ltd. through which securities purchases/sales*

have been executed by the assessee in the relevant assessment year. The transactions in this demat account have been executed through the bank account No. 028301515412, ICICI Bank, Jabalpur. The assessee has submitted the transactions details of the demat account in which it has been noticed that in the concerned financial year, the assessee has total margin purchase of Rs.11,57,12,015/- and total sale of Rs.11,56,49,771/- netting total loss at Rs.(-) 62,243/-, and this issue has been considered.

5. It is found that the learned Assessing Officer travelled beyond the issue involved in the "limited scrutiny" and made enquiries regarding the 'bank deposits' to the tune of Rs.7,25,000/- made on different dates. Accordingly, made addition of Rs.7,25,000/- as unexplained income of the assessee.

6. On the background of the above facts and circumstances, we find handy to refer the instructions of CBDT issued in respect of examination of issue other than the reasons taken up in limited scrutiny case. The instructions of the 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 29th 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 26-9-2014 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 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 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.*

(Ankita Pandey)

Under Secretary to Government of India"

7. Further, Instruction No. 5 of 2016 dated 14.07.2016 reads as under:

"Instruction No. 5/2016 Government of India Ministry of Finance Department of Revenue Central Board of Direct Taxes North Block, New Delhi, the 14th of July, 2016 Subject: Direction regarding scope of enquiry in cases under 'Limited Scrutiny' selected through CASS 2015 & 2016-regd.-

Vide Instruction No. 20/2015 dated 29.12.2015 in File of even number, Board has laid down Standard Operating Procedure for handling of cases under 'Limited Scrutiny' which were selected through Computer Aided Scrutiny Selection in 'CASS Cycle 2015'. In these cases, it was stated that the general scope of enquiry in scrutiny proceedings should be restricted to the relevant parameters which formed the basis for selecting the case for scrutiny. However, in revenue potential cases, it was further provided that 'Complete Scrutiny' could be conducted, if there was potential escapement of income above a prescribed monetary limit, subject to the approval of administrative Pr. CIT/CIT/Pr. DIT/DIT.

2. *In order to ensure that maximum objectivity is maintained in converting a case falling under 'Limited Scrutiny' into a 'Complete Scrutiny' case, the matter has been further examined and in partial modification to Para 3(d) of the earlier order dated 29.12.2015, Board hereby lays down that while proposing to take up 'Complete Scrutiny' in a case which was originally earmarked for 'Limited Scrutiny', the Assessing Officer ('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'. In this regard, the monetary limits and requirement of administrative approval from Pr.*

CIT/CIT/Pr.DIT/DIT, as prescribed in Para 3(d) of earlier Instruction dated 29.12.2015, shall continue to remain applicable.

3. Further, while forming the reasonable view, the Assessing Officer would ensure that:

a. there exists credible material or information available on record for forming such view;

b. this reasonable view should not be based on mere suspicion, conjecture or unreliable source; and c. there must be a direct nexus between the available material and formation of such view.

4. It is further clarified that in cases under 'Limited Scrutiny', the scrutiny assessment proceedings would initially be confined only to issues under 'Limited Scrutiny' and questionnaires, enquiry, investigation etc. would be restricted to such issues. Only upon conversion of case to 'Complete Scrutiny' after following the procedure outlined above, the AO may examine the additional issues besides the issue(s) involved in 'Limited Scrutiny'. The AO shall also expeditiously intimate the taxpayer concerned regarding conducting 'Complete Scrutiny' in such cases.

5. It is also clarified that once a case has been converted to 'Complete Scrutiny', the AO can deal with any issue emerging from ongoing scrutiny proceedings notwithstanding the fact that the reason for such issue have not been included in the Note.

6. To ensure proper monitoring in cases which have been converted from 'Limited Scrutiny' to 'Complete Scrutiny', it is suggested, that provisions of [section 144A](#) of the Act may be invoked in suitable cases. To prevent possibility of fishing and roving enquiries in such cases, it is desirable that these cases should invariably be picked up while conducting Review or Inspection by the administrative authorities.

7. The above Instruction shall be applicable from the date of its issue and would cover the cases selected under CASS 2015 which are pending scrutiny cases as well as cases selected/being selected under the CASS 2016.

8. The contents of this Instruction may be brought to the notice of all for necessary compliance.

*(Rohit Garg)
Deputy Secretary to the Government of India"*

8. The above said Instructions are summarized as under:

i. The questionnaire u/s 142(1) shall be confined only to the issue of limited scrutiny.

ii. Approval of PCIT/CIT concern iii. PCIT/CIT concern shall grant approval in writing and after being satisfied on the merits of the case.

iv. Such cases shall be monitored by range head.

v. In limited scrutiny cases enquiry shall be restricted only on the issues of limited scrutiny.

vi. Only after conversion of case to complete scrutiny and after following the procedure outlined above the A.O. may examine the issues other than limited scrutiny issues.

v. The A.O. shall intimate the assessee regarding conducting complete scrutiny.

vi. The provisions of Sec. 144A should be invoked in suitable cases.

vii. To prevent the roving and fishing enquiries, such cases should be picked up for review and inspection by administrative authorities.

9. Reliance is also being placed in the order of the Co-ordinate Bench of ITAT in the case of CBS International Projects Pvt. Ltd. Vs ACIT, New Delhi in ITA No. 144/Del/2019 and order of the Hon'ble Jurisdictional High Court in the case of Best Plastics Pvt. Ltd. 295 ITR 256 wherein it was held that the assessment order passed by the Assessing Officer disregarding the instructions of the CBDT are liable to be set aside and no substantial question of law arises. The said judgment relied upon the decision of Hon'ble Supreme Court in the case of Commissioner of Customs Vs Indian Oil Corporation and also the judgment of Hon'ble Supreme Court in the case of UCO Bank Vs CIT: 237 ITR 889.

10. Considering the above facts and circumstances and also the CBDT Circular and the judicial precedents, we hold that the Assessing Officer can widen the scope of scrutiny even the case is selected for limited scrutiny under CASS, however, the condition precedent for such widening of the scope is that

the Assessing Officer has to seek prior approval of the authorities mentioned. Such prior approval and the permission of the PCIT is lacking in the instant case. There was no satisfaction about the merits of the issue which necessitated complete scrutiny in the instant case. Hence, the Assessment framed by the Assessing Officer on the issues which are not in consonance of the instruction of CBDT are liable to be quashed. The addition made by the Assessing Officer on account of cash deposit of Rs.4,50,000/- u/s 69A of the Act being beyond the scope of the limited scrutiny, the same is deleted.

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

(Order was pronounced in the open court on 30/11/2023)

Sd/.
(DR. B.R.R. KUMAR)
Accountant Member

Sd/.
(YOGESH KUMAR U.S.)
Judicial Member

Dated:30/11/2023
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R.,

Asstt. Registrar