

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.392/Kol/2023
Assessment Year: 2018-19**

Mind Sports League Pvt. Ltd. Room No. 606, Gera Imperium Grand (Patto Centre) Panjim, Goa- 403001. (PAN: AAKCM7505R)	Vs.	Principal Commissioner of Income Tax, Range-5, Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Miraj D. Shah, FCA
Respondent by : Shri Abhijit Kundu, CIT, DR

Date of Hearing : 19.10.2023
Date of Pronouncement : 30.11.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the revision order of Ld. Pr. CIT, Kolkata-5 vide Order No. ITBA/REV/F/REV5/2022-23/1050143438(1) dated 27.02.2023 u/s. 263 Income-tax Act, 1961 (hereinafter referred to as the "Act"), passed against assessment order by ITO, National e-Assessment Centre, Delhi u/s. 143(3) read with sections 143(3A) & 143(3B) of the Act dated 10.03.2021 for AY 2018-19.

2. Grounds raised by the assessee relate to assumption of jurisdiction by the Ld. Pr. CIT for invoking revisionary proceedings u/s. 263 of the Act and passing the impugned order thereon. The moot point in the present appeal is in respect of whether the Ld. Pr.

CIT can revise the assessment framed by the Ld. AO u/s. 143(3) when the assessment itself was a limited scrutiny assessment and the issue on which limited scrutiny assessment was framed was not raised by the Ld. Pr. CIT for invoking the revisionary proceedings and that whether the Ld. Pr. CIT can deliberate on any other issue other than the issue dealt by the Ld. AO in limited scrutiny assessment.

3. Brief facts of the case are that assessee filed its return of income on 25.09.2018 reporting total income at nil. Case of the assessee was selected through CASS for limited scrutiny assessment under the e-assessment scheme, 2019 on the issue of 'business expenses'. In the impugned assessment order it is stated that the present case pertains to the issue "large sales promotion expenses vis-à-vis gross receipts" and selected under limited scrutiny.

3.1. In the impugned assessment order passed u/s. 143(3) read with section 143(3A) and 143(3B), Ld. AO has thoroughly examined the claim of the assessee towards sales promotion expenses and various other expenses which have been discussed resulting into certain disallowance made u/s. 40(a)(ib). Subsequently, Ld. Pr. CIT on examination of assessment order and assessment record observed that in Form 26AS, assessee has received professional charges amounting to Rs.2,55,29,550/- from nine different parties and contractual income amounting to Rs.10,38,526/- from two different parties thus, totalling to Rs.2,65,68,076/-.

3.2. From the statement of P&L Account, in the impugned order, Ld. Pr. CIT observed that revenue from operations for the period is only Rs.1,12,93,000/- whereas total receipts as per Form 26AS is Rs.2,65,68,076/-. According to him, assessee has suppressed its taxable income to the tune of Rs.1,52,75,076/- and the aforesaid amount has not been taken into account while computing the total income in the year under consideration. He thus, drew a

consideration that assessment order is erroneous insofar as it is prejudicial to the interest of revenue and thus, it requires a revision.

3.3. A show cause notice dated 15.12.2022 was issued u/s. 263 against which the assessee furnished a detailed reply explaining its case. Ld. Pr. CIT has acknowledged the submissions made by the assessee on the issue raised by him in respect of receipts reported in Form 26AS. Despite this, he observed that the claim of the assessee requires verification since the assessment order was passed without making necessary enquiries or verification as to how the receipt has been accounted for and how the same has been taken into account while computing the total income for AY 2018-19. According to him, claim of the assessee in this respect should have been verified by the Ld. AO at the time of assessment and accordingly, the assessment order is erroneous insofar as it is prejudicial to the interest of revenue. He thus, directed the Ld. AO to verify the aforesaid facts. Aggrieved, the assessee is in appeal before the Tribunal.

4. Before us, Ld. Counsel at the outset, submitted that case of the assessee was selected for limited scrutiny assessment on the sole issue of 'large sales promotion expenses vis-à-vis gross receipts.' He stated that Ld. AO had examined this issue in detail and has made certain disallowances of the claim of expenses for which the assessee is in appeal before the Ld. CIT(A). Ld. Counsel submitted that there is requirement in law that if the Ld. AO has to go beyond the scope of issue for which limited scrutiny has to be undertaken by him, he has to seek prior permission of the superior officer in terms of CBDT Instruction No. 7/14 dated 26.09.2014 and Instruction No. 20/15 dated 19.12.2015. According to him, it was not open to the Ld. Pr. CIT while exercising suo moto revisional power u/s. 263 of the Act to find fault with the assessment order of the Ld. AO on the ground of it being erroneous on an issue not covered by the limited scrutiny

assessment when the Ld. AO could not have possibly examined such issue. He reiterated that in the present case, limited scrutiny was in respect of business expenses whereas the show cause notice u/s. 263 was regarding reporting of certain receipts in Form 26AS, resulting in suppressed taxable income. According to Ld. Counsel, the unconnected issue in the show cause notice and the assessment order could not lead to hold the assessment as to being erroneous in so far as prejudicial to the interest of revenue when the Ld. AO could not have travelled beyond the issues forming subject matter of the limited scrutiny.

4.1. To buttress his contention, Ld. Counsel placed reliance on the decision of Hon'ble jurisdictional High Court of Calcutta in the case of PCIT Vs. Naga Dhunseri Group Ltd. in ITAT 186/2022 IA No. GA/2/2022 dated 18.11.2022 wherein it was held that a bare reading of Instruction No. 7 of 2014 dated 26.09.2014 clearly shows that the Ld. Pr. CIT cannot make a roving enquiry in the guise of limited scrutiny and as such the Instruction issued by CBDT is binding on the department. The relevant extraction from the said judgment is reproduced as under:

“The short question involved in this case is whether the assumption of jurisdiction by the Principal Commissioner of Income Tax under Section 263 of the Act was justified. The learned Tribunal has analysed the factual position and found that the case of the assessee was selected for limited scrutiny under CASS and the issue which the Commissioner sought to reopen namely, the issue of disallowance under Section 14A of the Act, read with Rule 8D in respect of the exempt income was not one of the issues which was selected for scrutiny. The learned Tribunal in paragraph 2 of its order has set out the three items which have been selected for scrutiny namely, i) Introduction of capital in NBFC/investment company; ii) large deduction claimed u/s. 57 of the Act; and iii) Mismatch of amount paid to related persons u/s. 40A(2)(b) reported in audit report and ITR.

If that is the undisputed factual position, we find the reasoning given by the learned Tribunal is fully justified. That apart, the learned Tribunal has rightly pointed out that the CBDT has issued instructions as to the manner in which the limited scrutiny should be carried out. In CBDT

Instruction No.7 of 2014, dated 26th September, 2014, the relevant portion of the said Instruction reads as follows :-

"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 AIR/CIB/26AS cases. This functionality is expected to be operationalised 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."

A bare reading of the of the above Instruction clearly shows that the PCIT cannot make a roving enquiry in the guise of a limited scrutiny and as such the instruction issued by the CBDT is binding on the Department.

Thus, we find that on facts the learned Tribunal has granted relief in favour of the assessee.

The learned counsel appearing for the respondent points out that the PC IT in its order has relied upon a decision of the Learned Single Bench of the High Court of Kerala in the case of Sunrise Academy of Medical Specialities (India) Pvt. Ltd. vs. ITO Corporate Ward 2(1), Range-2, Kochi reported in WP(C) No.3485 of 2018 dated 22.05.2018.

On a reading of the said order, we find that the said order supports the case of the assessee rather than the revenue. Thus, we find there is no question of law much less substantial question of law arising for consideration in this appeal.

Accordingly, the appeal fails and is dismissed."

4.2. He also placed reliance on the decision of Hon'ble High court of Orissa in the case of PCIT Vs. Shark Mines & Minerals Pvt. Ltd. in ITA No. 1 of 2023 dated 02.03.2023 wherein also it was held that it was not open to the Ld. Pr. CIT while exercising suo moto revisional power u/s. 263 of the Act to find fault with the assessment order of the Ld. AO on the ground of it being erroneous on an issue not covered by the limited scrutiny when the AO could not have possibly occasion to examine such issue.

5. Per contra, Ld. CIT, DR placed reliance on the order of Ld. Pr. CIT and submitted that no prejudice is caused to the assessee since the Ld. Pr. CIT has directed the Ld. AO to examine the issue and pass the assessment order accordingly.

6. We have heard the rival contentions and perused the material available on record. In the present facts of the case, we note that case of the assessee was selected for limited scrutiny assessment under the e-Assessment Scheme, 2019 on the sole issue of business expenses as evident from the assessment order passed u/s. 143(3) of the Act. From the perusal of the said assessment order, we note that there is no whisper in the said order for expanding the scope of limited scrutiny after obtaining the permission from the competent authority. Further, Ld. CIT, DR has not brought anything on record contrary to the arguments and submission made by the Ld. Counsel for the assessee.

6.1. Before delving on the issue, we take note of the CBDT Instruction referred by the Ld. Counsel. Combined reading of instructions issued by CBDT and particularly, the CBDT Instruction NO.20/2015 dated 29.12.2015, sub-clause (b) of Clause (3) categorically states that questionnaire issued u/s. 142(1) of the Act, in a limited scrutiny case, shall remain confine 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. Sub clause (d) of Clause-3 further reads the expansion of the scope of limited scrutiny and there are certain conditionality. The conditionality are that during the course of assessment proceedings, in a limited scrutiny case, if it comes to notice to the AO that there is a potential escapement of income exceeding Rs.5 lakhs for normal CIT charge and for metro CIT charge, monetary limit shall be Rs.10 lakhs requiring substantial verification on any other issue, then the case

may be taken up for complete scrutiny with the prior approval of the PCIT/CCIT concerned. The another condition put forth by the CBDT is that such approval thereof accorded by the PCIT in writing after being satisfied about imports of the issues necessitating complete scrutiny in that particular case. Further condition that such cases shall be monitored by the Range Head and procedure indicated in Sub-clauses (a) (b) (c) above no longer be remain pending in such cases, which means and reading together clause (b) and (d) itself clarified that in case, the limited scrutiny cases are picked up for scrutiny assessment, the AO shall remain confine to the only reasons / issues for which case has been picked up for scrutiny and the scope of enquiry be restricted to the limited scrutiny issues only. The expansion of scope of scrutiny from limited scrutiny to complete scrutiny is that during the course of assessment proceedings, which comes to the notice of the AO that the potential escapement of income exceeding Rs.5 lakhs for normal CIT charge and exceeding Rs.10 lakhs for monetary limits for metro CIT charge. The case can be taken up for complete scrutiny with the approval of the PCIT / CCIT concerned, which means that the AO is empowered to enlarge the scope of limited scrutiny case to the complete scrutiny assessment in view of the above condition only and that also through quasi-judicial powers.

6.2. In view of the above discussion, considering the CBDT Instruction and judicial precedents stated above and the uncontroverted facts relating to limited scrutiny assessment on the sole issue of business expenses, we are of the view that once the AO cannot examine any other issue except the issue as selected for limited scrutiny assessment, the Ld. Pr CIT can examine only that issue which was before the Ld. AO during the course of scrutiny assessment and not any other issue which has not been subject

matter of the assessment in a limited scrutiny assessment. Hence, we quash the revisionary order and allow the appeal of the assessee.

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

Order is pronounced in the open court on 30th November, 2023

Sd/-
(Rajpal Yadav)
Vice President

Sd/-
(Girish Agrawal)
Accountant Member

Dated:30th November, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:.
 3. Pr. CIT-5, Kolkata.
 4. ITO, National e-assessment Centre, Delhi
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata