

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, KOLKATA
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy, Judicial Member]

I.T.A. No. 1000/Kol/2023
Assessment Year: 2014-15

Alishan Steels Pvt. Ltd. Room No. 210, Martin Burn Building, 1, R. N. Mukherjee Road, Lal Bazar, Kolkata-700001. (PAN: AAACG9883E)	Vs.	Deputy Commissioner of Income Tax, Circle-1(1), Kolkata.
Appellant		Respondent

Date of Hearing	26.12.2023
Date of Pronouncement	05.01.2024
For the Appellant	Shri B. K. Agarwal, AR
For the Respondent	Shri P. P. Barman, Addl. CIT

ORDER

Per Shri Rajesh Kumar, AM

This is an appeal preferred by the assessee against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 10.08.2022 for AY 2014-15.

2. The only issue raised by the assessee in the various grounds of appeal is against the order of Ld CIT(A) upholding the assessment order which is invalid on the ground that AO exceeded his jurisdiction in a limited scrutiny.

3. Facts in brief are that the assessee filed its return of income on 22.09.2014 declaring total income at Rs.72,68,669/-. The case of the assessee was selected for limited scrutiny for on examination of the service tax return for previous year 2013-14. The AO accepted the contention of the assessee with regard to the issue raised in the limited scrutiny however while passing the assessment order, the AO recomputed the loss to be carried forward from A.Y. 2013-014 and thus denied the set off in AY 2014-15 thereby denying the adjustment and claim of set off of brought forwards loss against the current year's income, resulting in rejection of the claim of assessee of set off of brought forward loss to the tune of Rs.72,68,669/- in the assessment framed u/s. 143(3) of the Act vide order dated 01.09.2016. The said order of the AO was confirmed by Ld. CIT(A).

4. Now the issue before us is whether the AO is empowered to adjudicate those issues/items which are not subject matter of the limited scrutiny without converting the limited scrutiny into complete scrutiny. The instant case was selected for limited scrutiny for examination of

sales/service tax issues. However, the AO surpassed his jurisdiction by recomputing the carried forward loss from FY 2013-14 in the assessment order itself in para 5 at page no. 3 of the assessment order and thereby denying the benefit of claim of carried forward loss to the assessee against the current year income to the tune of Rs.72,68,669/-. In our opinion, the AO has no power to touch upon any issue in the limited scrutiny which is not the subject matter of limited scrutiny. Therefore, the order passed by the AO is not sustainable in law. In our opinion, if the AO wants to make addition on any other issue then the AO first has to make out a case and obtain permission of the competent authority to convert the limited scrutiny into complete scrutiny and only then the addition can be made or claim can be rejected. Therefore, the rejection of claim in respect of carried forward loss from A.Y. 2013-14 in the impugned assessment year is without jurisdiction. The case of the assessee finds support from the decision of coordinate benches of Kolkata in ITA No. 392/Kol/2023 in the case of Mind Sports League Pvt. Ltd. Vs. Pr. CIT dated 30.11.2023 and in ITA No. 434/CHD/2019 in Vijay Kumar Vs. ITO dated 12.09.2019. The operative part of both the orders are reproduced as under:

“ITA No. 392/Kol/2023

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.”

ITA No.434/CHD/2019

“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. DR 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.”

4. Accordingly, we quash the order of AO and appeal of the assessee is allowed.

5. In the result, the appeal of assessee allowed.

Order is pronounced in the open court on 5th January, 2024

Sd/-

(Sonjoy Sharma)
Judicial Member

Sd/-

(Rajesh Kumar)
Accountant Member

Dated: 5th January, 2024

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant–
2. Respondent –
3. CIT(A), NFAC, Delhi.
4. CIT ,
5. DR, ITAT, Kolkata, (sent through e-mail).

True Copy

By Order
Assistant Registrar
ITAT, Kolkata Bench, Kolkata

1. Date of dictation- 27 /12/2023
2. Date on which the typed draft order is placed before the Dictating Member and Other member 27/12/2023
3. Date on which the approved order comes to the Sr. P.S./P.S. - /01/2024
4. Date on which the file goes to the Bench Clerk /01/2024
5. Date on which the file goes to the O.S.
6. Date of Dispatch of the Order.....