

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, KOLKATA**  
[Before Shri Rajesh Kumar, AM& Shri Sonjoy Sarma, JM]

**I.T.A. No. 331/Kol/2024**  
Assessment Year: 2017-18

Rohtang Commercial Private Ltd. 2, Ganesh Chandra Avenue, 2 <sup>nd</sup> Floor, Bow Bazar, Kolkata-700013. (PAN: AACCR4337E)	Vs.	Income Tax Officer, Ward-2(1), Kolkata
Appellant		Respondent

Date of conclusion of Hearing	01.05.2024
Date of Pronouncement	14.05.2024
For the Assessee	Shri Miraj D. Shah, AR
For the Respondent	Shri Abhijit Adhikary, Addl. CIT

**ORDER**

**Per Shri Rajesh Kumar, AM**

Appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 16.10.2023 for AY 2017-18.

2. Grounds raised by the assessee are reproduced as under:

*“1 That the Order passed u/s 250 is bad in law as well as on facts of the case.*

*2. That the Ld. CIT(A), NFAC erred in law as well as on facts of the case in not providing reasonable opportunity of hearing to the appellant.*

*3. That the Ld. CIT(A), NFAC erred in law as well as on facts of the case in confirming the addition of the Ld. Assessing Officer of treating investment of Rs.10,94,44,200/- as unexplained investment under section 69.*

*4. That the Ld. CIT(A), NFAC erred in law as well as on facts of the case in confirming the addition of the Ld. Assessing Officer of treating advances of Rs.13,20,75,455/- as unexplained investment under section 69.*

*5. That the appellant craves to leave, add, amend or adduce any of the grounds of appeal during the course of appellate proceedings.”*

3. Appeal of the assessee is time barred by 66 days and a condonation petition has been filed praying for condone the delay since the accountant who was looking after the income tax matters had fallen sick and because of his illness the appeal was not filed within the due date. Ld. DR has not raised any serious objection to this prayer of the assessee. Hence, we condone the delay and admit the appeal for hearing.

4. The issue raised in the 1<sup>st</sup> ground of appeal of the assessee is that the order passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) is bad in law

whereby the assessment which is otherwise invalid has been upheld because the case of the assessee has been selected for limited scrutiny and the additions made were never subject matter of the limited scrutiny.

5. Facts in brief are that the assessee company filed its original return of income on 06.11.2017 declaring total income of Rs. NIL. The same was processed u/s. 143(1) of the Act. Thereafter the case of the assessee was selected for limited scrutiny under CASS and on line notice u/s. 143(2) of the Act was generated through on line digital signature and was issued and serviced to the assessee on 13.08.2018. The reasons for limited scrutiny were i) expenses debited in P&L A/c for earning exempt income as per schedule BP of ITR is significantly lower as compared to investments made to earn exempt income and ii) low income in comparison to high loans/advances/investment in shares appearing in balance sheet. Thereafter, the AO issued notice u/s. 142(1) which was served on 13.02.2019 requiring the assessee to furnish various details/documents with respect to reasons for scrutiny. There was no compliance to the notice issued u/s. 143(2) and 142(1) of the Act. Thereafter, show cause notices were issued on 22.10.2019 and 18.11.2019 calling upon the assessee to show cause as to why the assessment should not be framed u/s. 144 of the Act by best judgment assessment. The AO did convert the limited scrutiny into complete scrutiny thereby travelling beyond scope of limited scrutiny. Finally, the case was fixed on 21.11.2019. Thereafter, the AO completed the assessment u/s. 144 of the Act on the basis of facts/material available before him by making two additions (i) in respect of unexplained expenditure u/s. 69 of Rs.10,94,44,200/- and (ii) unexplained cash credit u/s. 69 of the Act of Rs.13,20,75,455/-. The AO made the first addition as regards unexplained expenditure by noting that assessee has investments in unlisted equity shares which is treated as unexplained investment while the addition was made in respect of unexplained expenditure. Similarly, in respect of the second addition, the AO noted that the short term loans and advances was Rs.13,20,75,455/- which were not explained by the assessee and, therefore, treated as unexplained cash credit u/s. 69 of the Act. Therefore even passing the ex-parte order the us/ 144 of the Act, there was complete non application of mind to the facts as is apparent from the facts that investments shown in equity shares in the books of accounts were added as unexplained expenditure u/s 69 of the Act which is patently wrong. Similar is

the status with regard to the other addition i.e loans and advances given by the assessee were added u/s 69 of the Act.

6. In the appellate proceeding also, the order was framed ex parte by the Ld. CIT(A). The assessee submitted before us that e-mail ID of the company was accessible and managed by the Accountant who left the job and, therefore, the notice served could not be complied with. The Ld. AR submitted that since non-compliance was attributable to the reasons beyond the control of the assessee, therefore, same deserves to be considered leniently.

7. The Ld. A.R. vehemently submitted before the Bench that the order passed by the AO is void and nullity in the eyes of law on the ground that the AO has exceeded the jurisdiction by making those additions which were not covered in the limited scrutiny. The Ld. Counsel also drew our attention to assessment order by referring to the issues which were subject matter of the scrutiny and also the two additions which were made to the income of the assessee. The Ld. A.R. submitted that the AO has not converted the limited scrutiny into a broad scrutiny 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 make 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 and the decision of Co-ordinate Bench of Delhi in the case of Dev Milk Foods Pvt. Ltd. vs. Addl. CIT in ITA No. 6767/Del/2019 for AY 2015-16 dated 12.06.2020. 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.

7. The Ld. D.R on the other hand relied heavily on the order of authorities below by submitting while admitting that the case was not converted into complete scrutiny and two additions were made to the income of the assessee in ex-parte proceedings but the ld DR tried to correlate the additions to the issues raised in the limited scrutiny remotely and indirectly.

8. After hearing the rival contentions and perusing the material on record we note that the reasons for limited scrutiny were - i) expenses debited in P&L A/c for earning exempt income as per schedule BP of ITR is significantly lower as compared to investments made to earn exempt income and ii) low income in comparison to high loans/advances/investment in shares appearing in balance sheet. In our view this is complete 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. We note that the instruction provide that there has to be a direct nexus between the available material and formation of such view. The relevant part of the instruction is reproduced as under:

*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.*

8.1 Instruction no. 4 provides only complete scrutiny after following the procedure laid down above and the AO may examine the additional issues besides the issue involved in limited scrutiny and AO shall also expeditiously conduct complete scrutiny in such cases. We note that in the present case there has been a complete violation of the Circular issued by the CBDT. The case of the assessee finds support from the decision of Co-ordinate Bench of Delhi in the case of Dev Milk Foods Pvt. Ltd. (supra) wherein it has been held as under:

*6.0 We have heard the rival submissions and have also perused the material on record. After considering the entire factual matrix we first deal with the primary arguments of the Ld. Authorized Representative that the conversion of the case from limited scrutiny to complete scrutiny was not legally valid. The subject of conversion of case from limited scrutiny to complete scrutiny has been dealt with in CBDT Instruction No.5/2016 which is being reproduced herein under for the sake of convenience:*

*“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.*

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."*

6.1 *Earlier preceding instruction in this regard was 20/2015 which states 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 26.09.2014 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 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 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 Ahmedabad).*

*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.”*

*6.2 We have also gone through the CBDT letter bearing No. DGITVIF/HQ SI/2017-18 dated 30.11.2017 which states that the idea behind such stipulation was to enforce checks and balances upon the power of the Assessing Officer to do fishing and roving enquiries in cases selected for limited scrutiny etc. In this very letter, the CBDT has also highlighted the aspect of cryptic order sheet entries which according to the CBDT shows irresponsible, ad hoc and indisciplined working of an Officer of the Department. A perusal of the aforesaid instructions would show that the objective behind the issuance of these instructions is (i) to prevent possibility of fishing and roving enquiries; (ii) ensure maximum objectivity; and (iii) to enforce checks and balances upon the powers of an Assessing Officer.*

*6.3 We have also gone through the proposal drafted by the Assessing Officer on 05.10.2017 for converting the case from limited scrutiny to complete scrutiny. This reads as under:*

*“....4. In this regard it may be mentioned here that the assessee has shown a short term capital loss on sale of shares purchased on 09.07.2014 and sold on 15.02.2015 . The purchase price of the shares has been stated at Rs 499,98,440 and sale price has been mentioned at Rs 79,03,676. The resultant loss of Rs 420,94,764 has been set off by the assessee against long term capital gains. This transaction appears to be suspicious in nature and probably this loss has been created to reduce the*

*incidence of tax on long term capital gains discussed in para 3. This issue needs to be thoroughly examined to ascertain the genuineness of this loss”*

*6.4 We have also through the original order sheet entries, as were present in the assessment records and which had been submitted for our perusal by the Ld. Sr. Departmental Representative under our directions and it shows that there is not an iota of any cogent material mentioned by the Assessing Officer which enabled him to have reached the conclusion that this case was a fit case for conversion from limited scrutiny to complete scrutiny. We have also gone through the statement of assessee's Director Mr. Rohit Verma which was recorded on 18.07.2017 i.e., after the conversion of the case and even in his statement nothing adverse is coming out vis. a vis. the impugned transactions. If the proposal of the Assessing Officer dated 05.10.2017 and the approval of the Ld. Pr. Commissioner of Income Tax dated 10.10.2017 are examined on the anvil of paragraph 3 of CBDT Instruction No.5/2016, it is very much clear that no reasonable view is formed as mandated in the said CBDT InstructionNo.5/2016 in an objective manner and secondly merely suspicion and inference is the foundation of the view of the Assessing Officer. We also note that there is no direct nexus brought on record by the Assessing Officer in the said proposal and, therefore, it is very much apparent that the proposal of converting the limited scrutiny to complete scrutiny aimed at making fishing enquiries. We also note that the Ld. Pr. Commissioner of Income Tax has accorded the approval in a mere mechanical manner which is in clear violation of the CBDT InstructionsNo.20/2015.*

*6.5 The Hon'ble Calcutta High Court in the case of Amal Kumar Ghosh reported in 361 ITR 458 (Cal.) discussed the purpose behind the CBDT Circulars. The relevant observations of the Hon'ble Calcutta High Court are as under:*

*“.....Mrs. Gutgutia, learned Advocate submitted that the circulars are not meant for the purpose of permitting the unscrupulous assesseees from evading tax. Even assuming, that to be so, it cannot be said that the department, which is State, can be permitted to selectively apply the standards set by themselves for their own conduct. If this type of deviation is permitted, the consequences will be that floodgate of corruption will be opened which it is not desirable to encourage. When the department has set down a standard for itself, the department is bound by that standard and cannot act with discrimination. In case, it does that, the act of the department is bound to be struck down under Article 14 of the Constitution. In the facts of the case, it is not necessary for us to decide whether the intention of CBDT was to restrict the period of issuance of notice from the date of filing the return laid down under section 143(2) of the I.T. Act.”*

*6.6 The Co-ordinate bench of ITAT at Chandigarh in the case of Paya Kumari in ITA No.23/Chd/2011, vide order dated 24.02.2011, has held that even Section 292 BB of the Act cannot save the infirmity arising from infraction of CBDT Instructions dealing with the subject of scrutiny assessments where assessment has been framed in direct conflict with the guidelines issued by the CBDT.*

*6.7 Therefore, on an overall view of the factual matrix as well as settled judicial position, we are of the considered opinion that the instant conversion of the case from limited scrutiny to complete scrutiny cannot be upheld as the same is found to be in total violation of CBDT Instructions No.5/2016. Accordingly, it is our considered opinion that the entire assessment proceedings do not have any feet to stand on. Therefore, we hold the assessment order to be nullity and we quash the same.”*

8.2. Similarly the 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.”*

8.3. 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 the AO has exceeded his jurisdiction in making additions on those items/ issues which are beyond the scope of limited scrutiny without converting the same into complete scrutiny which is in clear violation of mandate given by CBDT in the said Circular and also against the ratio as has been laid by the Co-ordinate Bench of Delhi in the case of Dev Milk Foods Pvt. Ltd. (supra). 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 reasons. Accordingly we quash the assessment order as nullity and bad in law. Issue raised by the assessee in ground no. 1 is allowed.

10. Even otherwise two additions made one in respect of investments in equity shares in private company and also the loans & advances which recorded in the books of accounts of the assessee cannot be added u/s 69 of the Act which is also against the provisions of the Act and once the AO has made the addition under section 69 of the Act , same cannot be cured in the subsequent proceedings.

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

Order is pronounced in the open court on 14th May, 2024

Sd/-  
(Sonjoy Sarma)  
Judicial Member

Sd/-  
(Rajesh Kumar)  
Accountant Member

Dated: 14th May, 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, True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Bench, Kolkata