

**THE INCOME TAX APPELLATE TRIBUNAL  
DEHRADUN BENCH, NEW DELHI  
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER,  
AND  
SHRI VIMAL KUMAR, JUDICIAL MEMBER**  
(Through Video Conferencing)

**ITA No. 69/DDN/2023  
(Assessment Year: 2015-16)**

BSM PG College, C/o. Mohit Arora & Co, CA 22, Civil Lines, Roorkee, Roorkee (Appellant)	Vs. ITO (E), Dehradun  (Respondent)
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**PAN:AACTB8464D**

Assessee by :	Shri C. S. Anand, Adv
Revenue by:	Shri A. S. Rana, Sr. DR

Date of Hearing	23/08/2024
Date of pronouncement	29/08/2024

O R D E R

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.69/DDN/2023 for AY 2015-16, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. ITBA/NFAC/S/250/2023-24/1054409268(1) dated 17.07.2023 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 26.12.2017 by the Assessing Officer, ITO(Exemption), Dehradun (hereinafter referred to as 'Id. AO').

2. The assessee has raised the following grounds of appeal before us:-

*"1. That the assessment order is bad, because it was based upon an incorrect view formed by the learned AO that the assessee had carried out the business of running educational institutes.*

2. *That on peculiar facts of the case and in law, the total income returned by the assessee, ought to have been accepted.*

3. *That on the peculiar facts of the case and in law, applying the deemed income theory and the rationale behind section 44AD, is arbitrary, unjust and illegal.*

4. *That on the peculiar facts of the case and in law, the surplus of income over expenditure ought to have been made the basis of assessment.*

5. *That the National Faceless Appeal Centre has erred in approving the arbitrary action of the learned AO relating to estimation of income.*

6. *That on the peculiar facts of the case and in law, the amounts received towards Building Fund ought not to have been treated as 'direct income' of the assessee,*

7. *That the National Faceless Appeal Centre has erred in approving the action of the learned AO relating to the treatment given to the amounts received towards Building Fund.*

8. *That the below mentioned remarks of the National Faceless Appeal Centre are untenable-*

*(i) Moreover, even if Section 69A has not been specifically invoked, the fact remains that the A.O. has clearly stated in the assessment order that the 'cash received by the assessee has not been shown as receipt for the year' which means that the same was undisclosed cash/money in the assessee hands"; and*

*(ii) "In such a scenario as the present case, when unaccounted cash receipts are found in the hands of a taxable entity, the action of the A.O. in assessing the same as its income cannot be faulted, regardless of whether Section 69A is specifically invoked or not", is untenable.*

9. *That the National Faceless Appeal Centre has erred in not appreciating the fact that the amounts received towards the Building Fund could not have been treated as income of the assessee.*

3. The assessee has raised the following additional grounds of appeal:-

*"A. That the learned ITO (Exemptions) Dehradun had illegally assumed jurisdiction to pass the assessment order.*

*B. That the assessment order is bad in law, because the learned AO had travelled beyond the scope of 'limited scrutiny', without obtaining the required permission from the competent authority"*

4. The additional grounds raised by the assessee are purely legal in nature and goes to the root of the matter. The facts relevant for its adjudication are already on record. Hence, in view of the decision of the Hon'ble Supreme Court in the case of NTPC Ltd reported in 229 ITR 383, additional grounds are hereby admitted and taken up for adjudication.

5. We have heard the rival submissions and perused the material available on record. The assessee is an Association Of Persons (AOP) engaged in providing educational activities. Return of income for assessment year 2015-16 was filed electronically by the assessee on 31.03.2017 declaring Nil income. The assessee had not obtained any registration u/s 12AA of the Act. The assessee is not a notified institution u/s 10(23C) of the Act. Hence, the case falls within the jurisdiction of regular business range and not in the jurisdiction of ITO (Exemptions), Dehradun. The return of the assessee for AY 2015-16 was selected for limited scrutiny to examine the issue "whether the cash deposit has been made from disclosed sources". Accordingly, notice u/s 143(2) of the Act stood issued to the assessee by ITO, Ward- 1(3)(4), Roorkee. It is pertinent to note that the return was filed by the assessee on 31.03.2017 with ITO, Ward-1(3)(4), Roorkee. The Id AO during the course of scrutiny assessment proceeding sought details of source of cash deposits made in the bank account. The assessee submitted its reply on various dates in November and December 2017 furnishing the complete details for the whole year. The Id AO was admittedly satisfied with the explanation given by the assessee with regard to source of cash deposits and ultimately the Id AO did not make any addition towards the same in the assessment. However, the Id AO proceeded to treat the assessee as a business assessee and sought to make different additions as under:-

A. additions towards gross profit @ 8% of gross receipts by applying Section 44AD of ₹28,30,718/-

B. cash received as building fund, was treated as direct income of the assessee which was not applied by the assessee during the year of Rs. 46,75,000/-.

6. The Id AO completed the assessment determining the total income of the assessee at ₹75,05,718/-. It is pertinent to note that this assessment was completed by ITO (Exemptions), Dehradun, whereas jurisdiction of the assessee lies with ITO, Ward-1(3)(4), Roorkee. Further, it is to be noted that the return filed by the assessee was only selected for limited scrutiny. There is absolutely no mention in the assessment order with regard to the fact as to whether this limited scrutiny was sought to be converted into complete scrutiny by taking necessary approval from the competent authority in accordance with the CBDT guidelines and instructions. Admittedly, no addition was even sought to be made by the Id AO on the issue of cash deposits, which is sought to be examined under limited scrutiny. Hence, the additional grounds were raised by the assessee before us.

7. The Id DR merely argued that jurisdiction of the Assessing Officer need to be questioned within 30 days from the date of receipt of notice u/s 143(2) of the Act in terms of Section 124(3) of the Act. He argued that the assessee in the instant case had cooperated with the assessment proceedings by not raising jurisdiction of the AO and hence he would be precluded from raising the issue of jurisdiction of the AO before this tribunal. We are unable to comprehend ourselves to accept this argument of the Id DR as jurisdictional issue is a legal issue and could be raised at any point of time by the assessee. Merely because the assessee had cooperated in the assessment proceedings by furnishing the requisite details, it would

not be precluded from raising the question of jurisdiction by the Id AO in higher forums. The provisions of Section 124(3), Section 292B and Section 292BB of the Act would not come to the rescue of the revenue in the instant case. There is no estoppel against the statute. The jurisdiction of the AO is to be provided in the statute and not even by the consent of the assessee. Admittedly, the return of income was filed by the assessee with ITO, Ward-1(3)(4), Roorkee which was taken up for Limited scrutiny. Notice u/s 143(2) of the Act also was issued only by ITO-Ward-1(3)(4), Roorkee. It is absolutely not known as to how the assessee's file got transferred from ITO Ward 1(3)(4), Roorkee to ITO(Exemptions), Dehradun. No such mention is made in the assessment order regarding passing of any order u/s 127 of the Act by the Id PCIT. We further find that scrutiny assessment order for assessment year 2016-17 was framed by National Faceless Appeal Centre (NFAC), Delhi vide order dated 25.03.2022 and scrutiny assessment for assessment year 2017-18 was framed u/s 143(3) of the Act on 06.12.2019 by ITO, Ward-1(3)(4), Roorkee. While this is so, there is absolutely no reason for ITO (Exemptions), Dehradun to enter the scene and assume jurisdiction only for assessment year 2015-16 without having any transfer order u/s 127 of the Act. Hence, we hold that the entire assessment framed by ITO (Exemptions), Dehradun lacks jurisdiction. Accordingly, additional ground 1 raised by the assessee is allowed.

8. We also find that the case was selected for limited scrutiny and no addition was made on the issue that was sought to be examined for limited scrutiny. The Id AO instead proceeded to make totally different addition, which was not subject matter of limited scrutiny. As per CBDT instruction and guidelines issued in the context of limited scrutiny of cases, wherein the Assessing officer intend to convert the Limited scrutiny into complete scrutiny, he has to seek necessary prior approval of the Id PCIT and notify

the assessee thereon in that regard. In the instant case, neither an application to the competent authority was made by the AO for converting the case from limited scrutiny to complete scrutiny nor the same was notified to the assessee. Hence, the entire assessment framed becomes ab initio void de hors the fact that the assessment was framed by an Officer not having jurisdiction. Hence, the assessment framed deserves to be quashed on this count also. Accordingly, additional ground no. 2 raised by the assessee is allowed.

9. Since the entire assessment framed is quashed, pursuant to allowing of additional grounds raised by the assessee, the adjudication of original grounds raised by the assessee becomes academic in nature and the same are hereby left open.

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

Order pronounced in the open court on 29/08/2024.

-Sd/-

**(VIMAL KUMAR)**  
**JUDICIAL MEMBER**

-Sd/-

**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 29/08/2024

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi