

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN CIRCUIT BENCH: DEHRADUN**

**BEFORE,
SHRI M.BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No.208/DDN/2019
(ASSESSMENT YEAR 2016-17)**

Income Tax Officer Ward-1(2)(2) 13A, Subhash Road, Dehradun, Uttarakhand,	Vs.	Rajpal Chaurasia S/o Shri Devi Prasad Chaurasia R/o C/o, Chaurasia & Sons, Chawk Bazar, Vikas Nagar, Dehradun Uttarakhand PAN-AAKPC4845M
(Appellant)		(Respondent)

Cross Objection No.02/DDN/2021
Arising out of ITA No.208/DDN/2019
(ASSESSMENT YEAR 2016-17)

Rajpal Chaurasia S/o Shri Devi Prasad Chaurasia R/o C/o Chaurasia & Sons, Chawk Bazar, Vikas Nagar, Dehradun, Uttarakhand PAN-AAKPC4845M	Vs.	Income Tax Officer Ward-1(2)(2) 13A, Subhash Road, Dehradun, Uttarakhand,
(Appellant)		(Respondent)

Appellant By	Sh. R. Sahni, CA
Respondent by	Sh. A.S. Rana, Sr. DR
Date of Hearing	11/06/2024
Date of Pronouncement	30/08/2024

ORDER

PER VIMAL KUMAR, JM:

1. The appeal of the Department of Revenue and Cross Objection by assessee arise out of order of Learned Commissioner of Income Tax (Appeals), Haldwani [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No.52/CIT(A)/HLD/2015-16 dated 30/03/2017 against order passed by the Assistant Commissioner of Income Tax, Circle-1, Haldwani (hereinafter referred to as the 'Ld. AO') u/s 153C/143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 31/03/2015 for the Assessment Year 2010-11.

2. The brief facts of case are, that appellant/assessee filed return of income in year 2016-17 on 20/09/2016. The case of assessee was selected for scrutiny through CASS. Notice u/s 143(2) issued on 04/07/2017 with issue "Substantial increase in capital in a year (Part A-BS of ITR) and large deduction claimed u/s 54B, 54C, 54D, 54G, 54GA (Schedule CG of ITR)". As per information available on ITBA, assessee had deposited cash of Rs.17.33 lac with SBI during the year. Vide office notice dated 03/07/2018 assessee was asked about documentary evidence regarding his returns of income:-

Head	AY 2011-12	AY 2012-13	AY 2013-14	AY 2014-15	AY 2015-16	AY 2016-17
Prop. Capital	22,61,175	24,24,471	26,14,517	28,72,107	-	191,41,180
Unsecured Loans	-	-	-	-	-	883,200
Gross Block	10,84,500	10,84,500	10,84,500	10,84,500		49,39,500
Sundry Debtors- Sundry Creditor= Net Result	2,47,525- 1,45,250= 102,275	235,980- 215,250 =20,730	1,35,620- 1,85,450 =49,830	0-245,777 =(-) 245,777	0-0=0	0-175,445 =(-) 175,445
Closing Stock	7,25,450	8,05,480	9,99,780	10,99,780	0	10,00,250
Opening Stock	7,02,505	7,25,450	8,05,480	899,780	899,780	12,45,018
Cash in hand	85,450	97,638	64,932	103,411	0	36,186
Balance Bank	2,63,500	4,16,123	6,11,422	824,749	-	67,87,939
Other current Assets	-	-	-	-	-	74,28,000
Long term capi. Gain						258,685
Net Profit to capital	260,855	318,675	323,175	328,975	383,800	514,502

3. On completion of assessment proceedings, vide assessment order dated 31/10/2018, the assessment in case was completed at total income of Rs.1,92,02,930/- and penalty proceedings assessee also initiated.

4. Appellant/assessee preferred appeal before Learned CIT(A) which was allowed vide order dated 24/10/2019. It was held that sale transactions of plots were to be treated as sale of Capital asset and relevant provisions of Capital gain if applicable will apply as per law. The appellant/assessee was eligible to claim under Section 54B of the Income Tax Act, 1961. Assessing Officer was directed to calculate the capital gain and allow exemption u/s 54B of the Act.

5. Appellant/ Department of Revenue preferred appeal with following grounds:-

“1. That the CIT(A) has erred in law and on facts in not confirming the activities of development and sales & purchases of 21 plots of land as covered under 'adventure in the nature' of trade as held by the AO and ignoring the facts that the assessee himself has claimed improvement cost of Rs.3,45,486/- towards development of the land into small plots of land.

2. That the CIT(A) has erred in law and on facts in allowing the deduction u/s 54B of the I.T. Act, 1961 ignoring the facts that the transferred property was not an agricultural land and the assessee has not carried out any agricultural activities in any of the earlier years before plotting and ignoring the fact that new assets which were four plots at different locations were not agricultural land within the meaning of section 54B of the I. T. Act, 1961.

3. That the CIT(A) has erred on facts in deleting the addition made by the AO on account of unexplained capital increase at Rs.33,48,981/-, without appreciating the following facts:

a) That the addition of Rs.33,48,981/- was made on account of increase in capital claimed by the assessee on account of accumulation of agricultural income, though no agricultural income was declared in his returns in any of the previous years or current assessment year.

b) That the assessee failed to prove that whole the investment against purchase of land of Rs.1,37,68,500/- not incurred in full during the year but just Rs.38,55,000/- was paid and the rest amount claimed without any evidence as paid in forthcoming year.

4. The Id. CIT(A) has erred in law and on facts in accepting the loan of Rs.8,83,200/- from his brother as explained.

5. That the order of Id. CIT(A) be set-aside and that of the AO be restored.”

6. Respondent/ assessee preferred Cross Objections with grounds:-

“1 On the facts and circumstances of the case, the respondent wishes to rely upon the Order of the Hon'ble CIT(A) dated 24.10.2019.

2 On the facts and circumstances of the case, the Ld AO has erred in law and on facts in treating the sale of land in parts as "adventure in the nature of trade".

3 On the facts and circumstances of the case the Ld. AO has erred in law and on facts in not allowing the exemption under Section 54B of the I. T. Act, 1961 in respect of agricultural land purchased on sale of other capital asset.

4 On the facts and circumstances of the case, the Ld AO has erred in law and on facts in not accepting the Statement of Affairs of the Assessee for the Financial Years 2014-15 and 2015-16 to explain the increase in capital of the Assessee by Rs.33,48,981 from 1.4..2014 to 31.3.2016.

5 On the facts and circumstances of the case, the Ld AO has erred in law and on facts by stating that an outlay of only Rs.38,55,00 was made under Section 54B upto 31.3.2016, whereas claim under Section 54B of Rs.1,37,68,500 was made before the due date of filing of return of income.

6 On the facts and circumstances of the case, the Ld AO has erred in law and on facts in stating that loan of Rs.8,83,200 from his brother stands unexplained, since no adverse inference has been drawn leading to any addition on this ground in his Assessment Order.

7. On the facts and circumstances of the case, the Ld AO cannot go beyond the issues listed in Limited Scrutiny Notice under Section 143(2), where the issues listed were:- 1)Whether the Share Capital is genuine and from disclosed sources; 2) whether deduction from capital gains has been claimed correctly."

7. Respondent/assessee also took additional ground as:

"1. That having regard to the facts and circumstances of the case, impugned assessment order passed u/s 143(3) of the Income Tax Act, 1961 is illegal since the "Limited Scrutiny" case was converted to a "Complete Scrutiny" without the necessary approval of the Competent Authority.

8. Learned Authorized Representative for Department of Revenue submitted that Learned CIT(A) erred in not confirming the activities of development and sales & purchases of 21 plots of land as covered

under 'adventure in the nature of trade as held by the Learned AO and ignoring facts that the assessee himself has claimed improvement cost of Rs.3,45,486/- towards development of land into small plots of land.

9. Learned Authorized Representative for Department of Revenue submitted that Learned CIT(A) erred in allowing the deduction u/s 54B of the I. T. Act, 1961 ignoring the facts that the transferred property was not an agricultural land and the assessee has not carried out any agricultural activities in any of earlier years before plotting and ignoring fact that new assets were four plots at different locations not agricultural land within meaning of section 54B of the I. T. Act, 1961.

10. Learned Authorized Representative for Department of Revenue submitted that Learned CIT(A) erred on facts in deleting addition made by the Learned AO on account of unexplained capital increase at Rs.33,48,981/-, without appreciating the facts that no agricultural income was declared in returns of previous year or current assessment year.

11. Learned Authorized Representative for Department of Revenue submitted that Learned CIT(A) erred in not appreciating that the assessee failed to prove that whole the investment against purchase of land of Rs.1,37,68,500/- not incurred in full during the year but just Rs.38,55,000/- was paid and the rest amount claimed without

any evidence. So, the appeal may be accepted and Cross Objection be rejected.

12. Learned Authorized Representative for respondent/assessee submitted that impugned assessment order passed u/s 143(3) of the Income Tax Act, 1961 is illegal since "Limited Scrutiny" case was converted to a "Complete Scrutiny" without necessary approval of the Competent Authority. Notice under Section 143(2) dated 4.7.2017 is already placed at Annexure 1 PB 18 to 21 for Limited Scrutiny (CASS) with issues identified for examination as under:-

- (a) *Whether the share capital is genuine and from disclosed sources.*
- (b) *Whether deduction from capital gains has been claimed correctly.*

The additions made by Learned AO in Assessment Order dated 31/10/2018 are:-

- (a) *Income from the activity "adventure in nature of trade" Rs.1,53,39,450; and*
- (b) *Income from undisclosed income under Section 69 on account of unexplained increase in Share Capital Rs.33,48,981.*

13. Learned Authorized Representative for respondent/assessee submitted that the appellant moved an application under Section 6 of the Right to Information Act, 2005 on 22.11.2023. Copy of the same is Annexure-2 PB 22. Learned AO gave reply dated 30/11/2023 Annexure-3 PB 23 to the application. Unlike CASS 2015 and 2016 cycles, where consideration of any additional issue lead to conversion of case to 'Complete Scrutiny' as laid down in Instruction No. 5/2016 dated 14.07.16, the pending 'Limited

Scrutiny' cases of CASS 2017 and 2018 cycles would not be taken up for 'Complete Scrutiny' as the present directive is only to facilitate consideration of those issues wherein specific information of tax-evasion has been furnished by any law-enforcement/intelligence/regulatory authority or agency. Therefore, in such 'Limited Scrutiny' cases, Assessing Officer shall not expand the scope of enquiry/investigation beyond the issue(s) on which the case was flagged for 'Limited Scrutiny' & issue arising from nature of information mentioned in para 2 and 3, above" Copy of the said Directive is Annexure-4 PB 24 and 25. Instruction dated 28/11/2018 refers to Instruction No.5/2016 dated 14/7/2016, which is Annexure 5 PB 26 and 27.

14. Learned Authorized Representative for respondent/assessee submitted that Learned AO in Para 4 of the Assessment Order (Annexure 6 PB 28 to 40) has listed the issues Involved in the case, as under:-

- (a) Cost of improvement claimed at Rs.3,45,486 against expenditures claimed in various previous years for Rs.24,500, Rs.32,500, Rs.40,500, Rs.35,500 for which the assessee could not brought into file any documentary or circumstantial evidences in support of these expenditures.
- (b) Assessee increase his capital by an amount of Rs.162,69,073/- in comparison to year 2014-15.
- (c) Issue of fund received from brother Rs.883,200/- remain non verifiable on the part of assessee.
- (d) Issue of claim of deduction u/s 54B on account of residential plots of land purchased and investment made prior to the sale of original asset.

15. Learned Authorized Representative for respondent submitted that in case of *CBS International Projects Private Limited vs. ACIT, ITA No. 144/Del/2019*, the Hon'ble ITAT, Delhi Bench discussed the same issue and held as under:-

"A perusal of the aforesaid instruction shows that the Assessing Officer can widen the scope of scrutiny even if it is selected for scrutiny assessment under CASS. However, the condition precedent for such action of the Assessing Officer is that he has to seek prior approval of the higher authorities. A perusal of the assessment order shows that the Assessing Officer has not mentioned as to when the permission from the PCIT was sought to make further enquiries in the case of the assessee. Considering the facts of the case in totality, in the light of the CBDT Instructions mentioned hereinabove, qua notice u/s 143(2) of the Act, we are of the considered opinion that the assessment order so framed by the Assessing Officer is not in consonance with Instruction of the CBDT and, therefore deserves to be quashed.

Hon'ble ITAT, Delhi Bench in the ITA no.6767/Del/2019 in the case of *Dev Milk Foods Private Limited vs. Addl. CIT Spl. Range 3*, has held as under:-

"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."

In the ITA no.73/JP/2020 in the case of *Shri Sita Ram Swami vs ITO Ward 4(5)*, the Hon'ble ITAT Jaipur Bench has held as under:-

"Further, the revenue has also not produced anything to show that the AO has obtained the necessary approval from the Competent Authority for conversion of the limited scrutiny to comprehensive scrutiny. Accordingly,

the issue which is taken up by the AO in the proceedings under section 154 is illegal and void being beyond his jurisdiction to frame the limited scrutiny assessment. Accordingly, we set aside and quash the order passed by the AO under section 154 of the Act."

In ITA no.1589/PUN/2018 and also ITA No.1590/PUN/2018 in the cases of *Shashi Bhushan Majdoor vs. ITO* and *Radhe Radhe Labour Coop Society vs. ITO* respectively, the Hon'ble ITAT, Pune Bench has held as under:

"Following the same parity of reasoning, we hold that in the absence of any approval received from Pr.CIT / CIT, there is no merit in the order of Assessing Officer in making any addition other than on the issues selected under CASS. Thus, the assessment order passed in the present case suffers from infirmity and the same is quashed. Since we have decided the jurisdictional issue raised vide ground of appeal No.3, the other grounds of appeal would become academic."

16. From examination of record in light of above said rival contentions it is crystal clear that Learned AO held that sale transactions of 21 plots constituted adventure in nature of trade. The assessee had made sale of 21 plots out of agricultural land between 26/08/2015 and 08/03/2016 for Rs.1.53,38,000/- in total. The assessee had inherited from his father in 1982 and held it for the last almost 37 years. Learned AO has treated the sale of land in small plots as an "adventure in nature of trade" and taxed the income therefrom under the head "Business or Professional". The Learned CIT(A) observed that the AO nowhere stated in the assessment order that appellant had organized office for making business profit. The only point was regarding multiple sales of part of one piece of land inherited by the appellant. Assessee had not

done regular or continues purchase and sale of land inherited by him in 21 pieces. The normal business of assessee was trading of Pan, Bidi, Cigaretes & Tobacco with gross turn over Rs.52,45,445/- from a business of “M/s Chaurasia and Sons”. Assessee had sold land in small lots to generate money to fund the purchase of new agricultural land, a fact that has not been rebutted by Learned AO. The assessee had inherited the land through under will which he sold 21 lots. The Learned AO had not commented as to how the land was reflected in the financial statement of the assessee. During the appeal before Learned CIT(A) assessee had submitted khasara of the land purchase showing agricultural activity and growing of crops. Therefore, the findings of the Learned AO that the sale transaction of plots constituted in the nature of trade was unfounded and was deleted. The sale transaction of plots was to be treated as a sale of capital asset and the relevant provisions of the capital gains were applicable.

17. The second issue of denial of exemption u/s 54B of the IT Act by the Ld. AO was also held to be wrong. The Learned CIT(A) directed AO to:-

- (1) Calculate the indexed cost of acquisition of the land for the Financial Year 2015-16 keeping in mind the base index of 1981.
- (2) Calculate the Capital Gain after deducting the ICOA arrived at as per Point 1 above.
- (3) Allow exemption under Section 54B of the I.T. Act, 1961 in terms of the formula given in Section 54B.

The addition made by denial of exemption was rightly deleted.

18. The third issue of addition of Rs.33,48,981/- on account of increase in capital. Learned AO had made addition u/s 69 of the Act. Learned AO had asked Explanation for increase in capital account of the assessee. In the process Learned AO has mentioned the fact that assessee had an entry payable to Sh. Ram Kuma amounting to Rs.8,83,200/- shown under the head current liability while passing the assessment order the AO has not drawn any specific adverse inference on this issue and no specific addition on this matter. Moreover, the said issue of current liability of Ram Kumar is beyond the scope of to specific issues listed in the limited scrutiny Notice. The assessee produced Balance Sheet as at 31/03/2015 and 31/03/2016 explaining the above difference but the AO did not agree. On perusal of assessment record held that Balance Sheet as at 31/03/2015 was submitted before the AO and are placed page No.407. As for as the current year is concerned the data filed in the return of Income shows the addition to the Capital for the financial year 2015-16. The increase in Capital Account of the appellant/assessee of Rs.1,62,69,053/- was fully explained by the above Balance Sheets of FY 2014-15 and 2015-16, and, as per the accounting principles, the addition made by the AO was held to be erroneous. The findings of Learned CIT(A) do not suffer from any illegality or irregularity. As such, grounds of appeal being devoid of merit are untenable. The appeal of Revenue deserves dismissal.

19. Notice u/s 143 (2) dated 04/07/2017 Annexure-1 PB 18 to 21 for Limited Scrutiny (CASS) with issued identified for examination as under:-

(a) Whether the share capital is genuine and from disclosed sources.

(b) Whether deduction from capital gains has been claimed correctly.

The Learned AO vide order dated 31/10/2018 made addition in Assessment Order as under:-

(a) Income from the activity "adventure in nature of trade" Rs.1,53,39,450; and

(b) Income from undisclosed income u/s 69 on account of unexplained increase in Share Capital Rs.33,48,981/-.

20. In response to application Annexure-2 PB 22, AO gave reply dated 31/11/2023. Annexure-3 PB 23. Unlike CASS 2015 and 2016 cycles, where consideration of any additional issue lead to conversion of case to 'Complete Scrutiny' as laid down in Instruction No. 5/2016 dated 14/07/16, the pending 'Limited Scrutiny' cases of CASS 2017 and 2018 cycles would not be taken up for 'Complete Scrutiny' as the present directive is only to facilitate consideration of those issues wherein specific information of tax-evasion has been furnished by any law-enforcement/intelligence/regulatory authority or agency. Therefore, in such 'Limited Scrutiny' cases, Assessing Officer shall not expand the scope of enquiry/investigation beyond the issue(s) on which the case was flagged for 'Limited Scrutiny' & issue arising from nature of information mentioned in para 2 and 3, above" Copy of the said

Directive is Annexure-4 PB 24 and 25. Instruction dated 28/11/2018 refers to Instruction No.5/2016 dated 14/7/2016, which is Annexure 5 PB 26 and 27.

21. Reading of assessment order shows that Ld. AO has not mentioned as to when permission from PCIT was sought.

22. In case of *CBS International Projects Private Limited (supra)*, the Hon'ble ITAT, Delhi Bench discussed the same issue and held as under:-

"A perusal of the aforesaid instruction shows that the Assessing Officer can widen the scope of scrutiny even if it is selected for scrutiny assessment under CASS. However, the condition precedent for such action of the Assessing Officer is that he has to seek prior approval of the higher authorities. A perusal of the assessment order shows that the Assessing Officer has not mentioned as to when the permission from the PCIT was sought to make further enquiries in the case of the assessee. Considering the facts of the case in totality, in the light of the CBDT Instructions mentioned hereinabove, qua notice u/s 143(2) of the Act, we are of the considered opinion that the assessment order so framed by the Assessing Officer is not in consonance with Instruction of the CBDT and, therefore deserves to be quashed.

23. From above material facts in light of above well settled principle of law it is evident that Learned AO had passed order in violation of the instructions, therefore, the order of Learned AO deserves to be set aside.

24. Hence, appeal of Department of Revenue is dismissed and the Cross Objections of respondent/assessee are allowed.

Order pronounced on 30th August, 2024.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

Dated: 30/08/2024

PK/PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI
(Dehradun Circuit Bench, Dehradun)