

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW 'B' BENCH, LUCKNOW**

**BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.647/Lkw/2019
A.Y.-2015-16

M/s Sultanpur Zilla Sahkari Bank Ltd., Near Collectorate, Allahabad Road, Civil Lines, Sultanpur, U.P.	vs.	Pr. CIT, Faizabad
PAN:AANAS6008C		
(Appellant)		(Respondent)

Assessee by:	Sh. J.L. Yadav, Adv
Revenue by:	Sh. Mazhar Akram, CIT DR
Date of hearing:	21.08.2024
Date of pronouncement:	30.09.2024

ORDER

PER SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER:

This is an appeal against the order of Pr. CIT, under section 263 of the Income Tax Act, 1961. The grounds of appeal preferred are as under:-

"1. The Learned Principal Commissioner of Income Tax, Faizabad (hereinafter referred to as the Ld. CIT) erred on facts and in law in invoking the provisions of section 263 of the I.T. Act, 1961 for set a siding the assessment order dated 20.12.2017 passed u/s 143(3) of the Act to the Assessing Officer by holding that the assessment order was erroneous and prejudicial to the interest of the Revenue on the ground that the appellant had not deposited the Provident Fund of Rs.7.46 Crore with the Appropriate Authority.

2. The Ld. CIT erred on facts and in law in not appreciating that the case of the appellant for the A.Y. 2015-2016 was selected for Limited Scrutiny and the issue as to whether the Provident Fund of Rs.7.46 Crore had been deposited with the Appropriate Authority or not, was not the reasons for selecting the case under Limited Scrutiny and as such the Ld. Assessing Officer was not required to go beyond the reasons given for the Limited Scrutiny.

3. The Ld. CIT erred on facts and in law in not appreciating the law that assessment order dated 20.12.2017 passed by the Ld. DCIT, Circle-Sultanpur was neither erroneous nor prejudicial to the interest of the

revenue as it was passed in light of reasons given for taking the case of the appellant for Limited Scrutiny.

4. The Ld. CIT erred on facts and in law in not providing the appellant reasonable and sufficient opportunity to have its say and to make compliances of the reasons being relied upon by the Ld. A.O.in making addition in the hands of the appellant.

5. The appellant reserves it right to advance such other grounds before or at the hearing, which it may consider fit and appropriate, for which it craves leaves to amend, alter or otherwise modify the grounds appearing hereinbefore with the kind permission of the Hon'ble Bench."

2. The facts of the case are that the assessee is a Cooperative Bank. Return declaring a loss of Rs. 1,22,969/- was filed on 29.12.2015. The case was selected for limited scrutiny on the grounds of i. Minimum Alternate Tax (MAT) liability mismatch. ii. Interest expenses. iii. Low income and high loans / advances / investments. iv. Increase in capital.

2.1 After scrutinizing the return on those issues, the ld. Assessing Officer accepted the return of the assessee. Thereafter, the ld. Pr. CIT, Faizabad called for the records of the case and during the course of the review observed that the assessee had not deposited Provident Fund of Rs.7.46 Crore with the appropriate authority but retained it with itself .As he was of the view that the same should have been treated as income under section 2(24)(x) of the Income Tax Act, 1961, in his opinion, the order of assessment dated 20.12.2017 was erroneous and prejudicial to the interest of Revenue within the meaning of section 263 of the Act. He, therefore, issued a show cause notice to the assessee on 27.06.2019. In response, a Section Officer of the Bank who was authorized appeared on 16.07.2019 and requested for another date of hearing. The same was granted on 21.08.2019 and on that date, the Branch Manager appeared and requested for another date. He was given a final date of 26.08.2019 to make his submissions but on that date no submissions were made. Therefore, the ld. Pr. CIT held that the assessment dated 20.12.2017 under section 143(3) was erroneous and prejudicial to the interest of the Revenue. Hence, the issue was set aside to the

file of the Id. Assessing Officer and the Id. Assessing Officer was directed to recomputed the assessment proceedings within three months.

3. The assessee is aggrieved against this order of the Pr. CIT and has accordingly, come before us in appeal. Shri. J.L. Yadav, Advocate represented the assessee in the proceedings and filed a written submission. It was submitted as under:-

"1. The present appeal is preferred by the appellant against the order passed by the Principal Commissioner of Income Tax (PCIT), Faizabad, Dt. 26.08.2019.

2. That, the Ld. Commissioner of Income Tax, mainly contesting initiation of revision proceedings u/s 263 by holding that the assessee has not deposited provident fund of Rs. 7.46 Crs. With the appropriate authority and the l.d. Pr. CIT says that the order of assessment was erroneous and prejudicial to the interests of the revenue within the meaning of section 263 of Income Tax Act.

3. That, the appellant contested that the appellant for the A.Y. 2015-2016 was selected for Limited Scrutiny and the issue as to whether the Provident Fund of Rs.7.46 Crore had been deposited with the appropriate Authority or not, was not the reasons for selecting the Limited Scrutiny and as such the Ld. Assessing Officer was not required to go beyond the reasons given for the Limited Scrutiny.

4. That, assessment order dated 20.12.2017 passed by the l.d. DCIT, Circle Sultanpur was neither erroneous nor prejudicial to the interest of the revenue as it was passed in light of reasons given for taking the case of the appellant for Limited Scrutiny.

5. That, the Ld. Pr. Commissioner of Income Tax, Faizabad has not provided sufficient opportunity of time to make compliance against the reason being relied upon by the Assessing officer.

6. Further, the assessee has not deposited provident fund of Rs. 7.46 Crs. With the appropriate authority due to financial crises in the bank at the time of assessment proceeding and no funds are available with the bank to deposit the said fund and even there is no fund available with the bank to pay salary to his employees.

7. That, the complete details in the matter was submitted before AO during the course of assessment proceedings and issues raised by Ld. Pr. Commissioner of Income Tax in his order under section 263 of the Act have been examined by the assessing officer and the assessment order was passed by assessing officer, after calling for relevant information and after detailed examination of the same. The Assessing Officer has passed the assessment order after calling for details on the issue and after considering the reply and documents and after verification of the same and after due application of mind passed the

assessment order, so it cannot be termed as erroneous and prejudicial to the interest of the revenue. So, the Ld. PCIT's finding fault, with the order of the Assessing Officer is erroneous as well as prejudicial to the interest of revenue, on account of lack of inquiry."

4. On the other hand, the ld. CIT DR Shri. Mazhar Akram held that since the non-payment of Provident Fund collections to the appropriate authority was duly mentioned in the audited accounts of the assessee, the ld. Assessing Officer was duty bound to consider the same and his failure to do so rendered the assessment order erroneous and prejudicial to the Revenue.

5. We have duly considered the facts and circumstances of the case. To our mind, the issue involved is not whether addition of Rs. 7,46,00,000/- ought to have been made in the hands of the assessee on account of failure to deposit the Provident Fund contribution with the appropriate authority but rather whether the order passed by the ld. Assessing Officer in the limited scrutiny proceedings which did not permit for examination of this point within the parameters of limited scrutiny was an order which was erroneous and prejudicial to Revenue. The CBDT had prescribed the manner in which returns selected for scrutiny through CASS 2015 were to be conducted into its instruction no. 20/2015 dated 29.12.2015. It has been pointed out that the procedure for handling limited scrutiny excess would be as under:-

a. In limited, "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 the 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 number of hearings.

d. During the course of assessment proceedings in, "limited scrutiny" cases, if it comes to the notice of the Id. Assessing Office that there is potential escapement of income exceeding Rs.5 Lacs (for Metro Charges) the monitory limits shall be Rs. 10 Lacs 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 Pr. CIT / CIT in writing after being satisfied about the merits of the issue(s) necessitating, "complete scrutiny" in that particular case. Such case shall be monitored by the range and confirmed."

6. A perusal of the assessment order shows that the Id. Assessing Officer did not expand the scope of his enquiry beyond i. Minimum Alternate Tax (MAT) liability mismatch. ii. Interest expenses. iii. Low income and high loans / advances / investments iv. Increase in capital. On this account, it has been argued that the jurisdiction of the Pr. CIT under section 263 has been ousted. However, if we consider the instruction no. 20/2015, issued by the CBDT and also the subsequent instruction no. 5 of 2016, issued by the CBDT on the issue of conversion of limited scrutiny to complete scrutiny, it emerges from the same that the Id. Assessing Officer was obliged to consider the possibility of making a proposal for complete scrutiny if there was potential escapement of income above a prescribed monitory limit. The only safeguards that were placed in instruction no. 5/2016 were that while forming such a reasonable view that the Id. Assessing Officer should ensure that a. There exists credible material or information. b. There must be a direct nexus between the available material and the formation of the view that complete scrutiny was required in the case. Thus it is quite clear that the two instructions do not restrict the assessing officer to approach a case with blinkers on but rather mandate an assessing officer to consider other points which may come to his knowledge within the course of limited scrutiny. They only place a safeguard that before proceeding to make an

inquiry in the matter, the assessing officer must take the written approval of the Principal CIT. A similar view has been held by the ITAT Kochi Bench in the case of **Baby Memorial Hospital Limited vs ACIT Circle 1 , Kozhikode (2019)111 Taxmann.com 189(Kochi-Trib)** where they have held ,*"In our opinion , even in a case of limited scrutiny assessment , the Assessing Officer is required to make a prima facie enquiry as to whether there is any other item that requires examination and in the assessment , the potential escapement of income thereof exceeded Rs 10 lakhs. He ought to have sought the permission of the CIT/DIT to convert the limited scrutiny assessment into "complete scrutiny assessment". If there was no escapement of income, which would have been more than Rs 10 lakhs , the Pr CIT could not exercise jurisdiction under section 263"*and further *"Now the argument of the ld AR that in a case of limited scrutiny assessment the Pr CIT could not exercise jurisdiction u/s 263 of the Act , is devoid of merit"*. In the case of **Sahyadri Industries Ltd Vs PCIT (2023)149 taxmann.com 202(Kerala)**, the Hon Kerala High Court has that the Commissioner had the supervisory jurisdiction to find out omission in the assessment order and since issue was not examined by the assessing officer , discretion exercised by Commissioner under section 263 could not be restricted under limited scrutiny under CASS.

6.1 In the present case , it is clear from the order under section 263 r.w.s. 143(3) passed by the ld. Assessing Officer on 26.12.2019, that in the statutory Auditor's report of the bank for the year ending 31st March, 2015 under point no. (e), the Auditor's had given an opinion, "bank has not deposited Provident Fund of Rs. 7.46 Crores with the appropriate authority, instead retained by themselves and giving interest @ 8.50% on the amount of gratuity retained by themselves, instead they should have given interest @ 8.75% as per Government rate of interest. Thus, it is observed that there was credible material with the ld. Assessing Officer at the time of the original assessment that indicated violation of section 36(1)(va) of the Income Tax Act, 1961 and rendered the said amount as income liable to be taxed under section 2(24)(x) of the Income Tax Act, 1961. The failure of the ld. Assessing Officer to take note of these entries in the audited

accounts of the assessee and to move a proposal before the competent authority for converting the case into complete scrutiny and bringing the said amount to tax in the hands of the assessee can therefore, be regarded as a failure to conduct proper enquiries. As per Explanation 2 to section 263 inserted by Finance Act, 2015 w.e.f. 1.06.2015 an order passed by Id. Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of Revenue, if in the opinion of the Pr. Commissioner;

a. The order has been passed without making enquiries or verification which should have been made,

b. The order is passed allowing any relief without enquiring into the claim,

c. The order has not been made in accordance with any direction of instruction issued by the Board under section 119,

d. The order has not been passed in accordance with any decision which is prejudicial to the assessee rendered by the jurisdictional High Court or the Hon'ble Supreme Court in the case of the assessee or any other person.

6.2 In the present case, it is clear that by not examining the audited accounts and moving the proposal before the Pr. CIT for conversion of the case into complete scrutiny, the order has been passed without making enquiries or verification which should have been made given the duties imposed upon the Id. Assessing Officer by instruction no. 20/2015. Therefore, the ground taken by the assessee that merely because the case was not picked for complete scrutiny in the first instance, it should be allowed to escape the incidence of tax due to an omission on the part of the Id. Assessing Officer to consider the material before him and make a reference in this regard to the Pr. CIT is not maintainable. " Ground nos. 1 to 3 is accordingly dismissed.

6.3 We have also observed that the Id. Pr. CIT gave the assessee at least three opportunities of hearing before the passing the order under section 263. Therefore, there was no lack of opportunity given to the assessee as alleged in ground no. 4, hence the same is dismissed.

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

Order pronounced on 30.09.2024 at Lucknow, U.P.

Sd/-

[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED: 30/09/2024

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Copy forwarded to:

1. Appellant -
2. Respondent -
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

Sd/-

[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

By order
Sr. P.S.