

**आयकर अपीलीय अधिकरण, कोलकाता पीठ "सी", कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA**  
श्री राजपाल यादव, उपाध्यक्ष एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष  
[Before Shri Rajpal Yadav, Vice-President & Shri Rajesh Kumar, Accountant Member]

**I.T.A. No. 702/Kol/2024**  
**Assessment Year: 2017-18**

Shri Rudraprasad Mondal  (PAN: BZVPM 3873 L)	Vs.	DCIT, Circle-27(1), Haldia
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	02.07.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	.10.2024
For the Appellant/ निर्धारिती की ओर से	Shri Soumitra Choudhury, Advocate Shri P Sarkar, Advocate
For the Respondent/ राजस्व की ओर से	Shri Arun Kumar Meena, Addl. CIT, Sr. D.R

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)"] dated 05.02.2024 for AY 2017-18.

2. The ground nos. 1 to 4 by the assessee are against the order of Ld. CIT(A) upholding the order of AO wherein the AO has made the addition in respect of an item which was not the subject matter of limited scrutiny that too without obtaining prior approval of PCIT as directed by CBDT vide Instruction No. F. No. 225/402/2018/ITA.II dated 28.11.2018 and therefore the order passed by the AO is ab-initio void and invalid.

3. Facts in brief are that the return of income was filed by the assessee on 24.10.2017 u/s 139(1) of the Act declaring total income of Rs. 7,76,890/- which was selected for scrutiny under CASS on the issue of cash deposits during demonetization period. Meaning thereby that the scrutiny was limited scrutiny and not complete scrutiny. However, during the course of assessment proceedings and while framing the assessment, the AO exceeded his jurisdiction by raising this issue which was not part of limited scrutiny. The AO made disallowance u/s 40A(3) of the Act in respect of cash payments to the tune of Rs. 43,37,528/- and has also made addition in respect of sundry creditors of Rs. 2,00,000/- in the assessment framed u/s 143(3) of the Act dated 24.12.2019.

4. The order was challenged by the assessee before the first appellate authority but the legal grounds raised by the assessee before us were not raised there. The appeal was dismissed by the Id CIT(A) on merits.

5. After hearing the rival contentions and perusing the material on record, we find that undisputedly the case of the assessee was selected for limited scrutiny for the reason that the cash deposits during demonetization period. However, during the course of assessment proceedings, the AO has enquired into the issues of cash payments exceeding Rs. 20,000/- as well as the sundry creditors outstanding. The AO made two additions (i) of Rs. 43,37,528/- on account of cash payments u/s 40A(3) and(ii) sundry creditors mismatch of Rs. 2,00,000/- after making the enquiries which were apparently outside the scope of limited scrutiny as the AO has not converted the limited scrutiny into complete scrutiny with prior approval of the Ld. PCIT which in our opinion is in incomplete 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 provides that there has to

be a direct nexus between the available material and formation of such view. The relevant part of the instruction are 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.”*

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. vs. Addl. CIT in ITA No. 6767/Del/2019 for AY 2015-16 dated 12.06.2020 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 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 Instruction No.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 Instructions No.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 assessee 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.”*

6. Similarly 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 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.”*

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 enquiring into those issues and making additions on those items which were beyond the scope of limited scrutiny which is in clear violation of mandate given by CBDT in the said Circular and has been held by the Co-ordinate Bench of Delhi in the case of Dev Milk Foods Pvt. Ltd. (supra) to be bad in law. 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 limited scrutiny was not converted into complete scrutiny. In our opinion, the order passed by the AO is bad in law and cannot be sustained for the said reasons stated above. Accordingly we quash the assessment order as nullity and bad in law. Issue raised by the assessee in ground no. 1 to 4 are allowed.

7. The other issues raised on merit by the assessee are not adjudicated as the appeal of the assessee is allowed on legal issues and are left open to be decided at later stage if the need arise for the same.

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

Order is pronounced in the open court on 8<sup>th</sup> October, 2024

Sd/-

Sd/-

(Rajpal Yadav /राजपाल यादव)

(Rajesh Kumar/राजेश कुमार)

Vice-President/उपाध्यक्ष

Accountant Member/लेखा सदस्य

Dated: 8<sup>th</sup> October, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Shri Rudraprasad Mandal, Harijhama, Pratappur, Tamluk, Purba Medinipur, West Bengal-721152
2. Respondent – DCIT, Circle-27(1), Haldia
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata