

**THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 1911/KOL/2024
Assessment Year: 2017-2018**

***Srimanta Kumar Shit,.....Appellant
Rangamalapur, Junput-Contai,
Purba Medinapore-721450, West Bengal
[PAN:BFFPS3635Q]***

-Vs.-

***Assistant Commissioner of Income Tax.....Respondent
Circle-27(2), Haldia,
Basudebpur, Talpukur,
Khanjan Chak, Haldia, Midnapore-721101, W.B.***

Appearances by:

*Shri S.K. Tulsian, Advocate & Lata Goyal, CA, appeared
on behalf of the assessee*

*Shri Subhendu Datta, CIT, D.R., appeared on behalf of
the Revenue*

**Date of concluding the hearing : October 22, 2024
Date of pronouncing the order : November 19, 2024**

O R D E R

Per Rajpal Yadav, Vice-President:-

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), Kolkata-22 dated 16th July, 2024 passed for Assessment Year 2017-18.

2. The assessee has taken eight grounds of appeal. Apart from these regular grounds of appeal, the assessee has raised additional ground of appeal and such additional ground of appeal reads as under:-

“That the ld. AO erred in issuing notice u/s 143(2) of the Act dated 24.09.2018 without complying to the CBDT Instruction F. No. 225/157/2017/ITA-II dated 23.06.2017 and so the notice issued u/s 143(2) is not valid as per law”.

“That the assessment order u/s 143(3) passed on 30.12.2019 provides that the return was selected for limited scrutiny on the issue “cash deposit during the demonetization” and so the additions made in the assessment order is without jurisdiction”.

3. This ground was raised on the strength of the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Co. Limited -vs.- CIT reported in 229 ITR 383 (SC). In this judgment, Hon'ble Supreme Court has propounded that if any jurisdictional issue is being raised for the first time, which is going to affect taxability of an assessee, then such an issue is allowed to be agitated by the appellant. A perusal of the application of the assessee and the above additional ground would indicate that it does not call for discovery of any new facts. It is purely a legal issue. Therefore, we allow this application of the assessee and entertain this additional ground for adjudication.

4. Brief facts of the case are that the assessee has filed his return of income on 07.11.2017 declaring total income of Rs.47,14,580/-. The ld. Assessing Officer has issued a notice under section 143(2) and thereafter under section 142(1). The ld. Assessing Officer has passed the impugned assessment order on

30.12.2019 determining the taxable income of the assessee at Rs.14,49,57,740/- as against the declared income.

5. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee.

6. Ld. Counsel for the assessee has filed a written note on the preliminary issue as also appraised us with the facts and circumstances. We deem it appropriate to take note of four pages written note submitted by the assessee, which read as under:-

“The present submission before your Honours emanates from the Appeal filed by the appellant in ITA No 191 l/Kol/2024 against the Order passed by the CIT(A)-22, Kolkata under section 250 of the Act for A.Y.2017-18.

Facts of the cases;

1. *The assessee is an individual engaged in the business of fish resale. He had filed his ITR for A.Y. 2017-18 on 07.11.2017 declaring income of Rs.47,14,580/-.*
2. *The return of the assessee was selected for scrutiny in CASS on the issue of Cash Deposit during demonetization period.*
3. *A Notice u/s 143(2) of the Act was issued on 24.09.2018. Thereafter notice u/s 142(1) of the Act was issued on 06.09.2019 followed by reminder letter dated 08.11.2019. Thereafter SCN was issued on 20.12.2019 proposing various additions made in in the Return of Income. The assessee did not reply to the same.*
4. *A notice u/s 133(6) was issued to banks for verification of cash deposit made by the assessee. The reply was duly received by the Ld.AO from the banks and the transactions were duly examined.*
5. *Thereafter, the assessment order u/s 143(3) of the Act read with section 144 of the Act was passed on 30.12.2019 making the following disallowances/additions:*

<i>Disallowance of Trawler related expenses and depreciation</i>	<i>Rs.1,14,97,589/-</i>
<i>Addition on account of sundry creditors</i>	<i>Rs. 12,55,30,136/-</i>

<i>Addition u/s 56(2)(vii)(b)(ii) of the Act</i>	<i>Rs.29,68,865/-</i>
<i>Addition on account of Fixed deposit u/s 69A</i>	<i>Rs.2,46,573/-</i>

6. *Being aggrieved, the assessee filed an appeal before the Ld. CIT(A) on 30.01.2020 which was disposed off by the Ld. CIT(A)-22 vide order dated 16.07.2024 confirming the additions made by the Id.AO.*

7. *Ultimately being aggrieved, the assessee has filed an appeal before your honours on 11.09.2024.*

8. *The additional grounds of appeal are being raised before your honours vide letter dated 22.10.2024 and the same are reproduced as under:*

“That the Ld.AO erred in issuing notice u/s 143(2) of the Act dated 24.09.2018 without complying to the CBDT Instruction F.No. 225/157/2017/ITA-II dated 23-06-2017 and so the notice issued u/s 143(2) is not valid as per law”.

“That the assessment order u/s 143(3) passed 30.12.2019 provides that the return was selected for limited scrutiny on the issue “cash deposit during the demonetization” and so the additions made in the assessment order is without jurisdiction”:

Submission on behalf of the Assessee:

1.A notice u/s 143(2) of the Act was issued on 24.09.2018 with the heading as under:

*“Notice under section 143(2) of the Income Tax Act, 1961
Scrutiny (Computer Aided Scrutiny Selection)”*

The aforesaid notice is not valid as per law.

In this regards it is submitted that revised format of issue of notice u/s 143(2) of the Act was provided by the CBDT vide F.NO.225/157/2017/ITA-II dated 23.06.2017. The said circular is enclosed at page 4-8 of paper book.

On perusal of said Circular, it shall be evident that the Notice u/s 143(2) of the Act was to be issued as per three formats that are:

- (i)Limited Scrutiny (Computer Aided Scrutiny System)*
- (ii)Complete Scrutiny (Computer Aided Scrutiny System)*
- (iii)Compulsory Manual Scrutiny*

The CBDT has also provided the formats as under:

*(i)Limited Scrutiny(Computer Aided Scrutiny System)
“Limited Scrutiny (Computer Aided Scrutiny Selection)*

Notice under section 143(2) of the Income Tax Act, 1961”

*(ii)Complete Scrutiny (Computer Aided Scrutiny System)
“Complete Scrutiny (Computer Aided Scrutiny Selection)
Notice under section 143(2) of the Income Tax Act, 1961”*

*(iii)Compulsory Manual Scrutiny
“Compulsory Manual Selection
Notice under section 143(2) of the Income Tax Act, 1961”*

However, in the case of the assessee there was no mention of the type of scrutiny under which the case of the assessee has been selected. Hence the notice issued u/s 143(2) is not valid as per law.

The Hon’ble High Court of Punjab and Haryana in the case of Commissioner of Income- tax v. Crystal Phosphates Ltd reported in [2024] 461ITR 289 held as under: [Refer page 13- 16 of the paper book]

As per CBDT Instructions the burden was on the authority assuming jurisdiction to show and establish that such instructions have been duly complied and satisfied in letter and spirit. Since notice under section 143 (2) of the Act was not in terms of the instructions of the CBDT, both the notice and the assessment framed were held to be without valid jurisdiction and were accordingly, quashed.

2.Without prejudice to the above, it is further submitted that on perusal of assessment order, it shall be evident that the case was selected for limited scrutiny for verification of “Cash Deposit during demonetization”. The same shall be evident from 1st para of the assessment order passed in the case of the assessee. The Id.AO in order to verify the cash deposit transaction has issued notice u/s 133(6) to the Banks. The Ld.AO had received reply from Banks, examined it and no addition was made on this account in the assessment order.

Since the case was selected for limited scrutiny and no addition was made on account of the issue for which it was selected for scrutiny, the assessment order passed in the case of the assessee is without jurisdiction and bad in law.

In support reliance is placed on the decision of the Hon’ble High Court of Calcutta in the case of Principal Commissioner of Income-tax v. Weilburger Coatings (India) (P.) Ltd reported in [2024] 463ITR 89 (Calcutta)]1-10-2023], brief facts and decision is as under:[refer page 19-22 of the paper book].

Brief Facts of the case

The case of assessee was selected for limited scrutiny covering four items namely receipt of large values foreign remittance, mismatch in amount paid to related persons under section 40A(2)(b), unsecured loans from persons who have not filed their return of income and loss from currency fluctuations.

The Assessing Officer issued notice under section 142(1) on assessee and thereafter, passed assessment under section 143(3) wherein he rejected set-off and carry forward of loss and made additions in income of assessee.

On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer.

On appeal, the Tribunal held that the issue which was decided by the Assessing Officer was not part of the limited scrutiny for which the assessment was directed to be scrutinised, thus, Tribunal taking note of the CBDT Instruction No. 5 of 2016 held that the Assessing Officer has exceeded his jurisdiction.

On appeal to the High Court:

Decision:

8.Learned senior Counsel for the respondent/assessee has placed before us another Instruction issued by the CBDT dated 30th November, 2017, being F. No. DGIT(Vig.)/HQ/SI/2017-18, wherein the CBDT has noted instances where some of the Assessing Officer were travelling beyond the issues while making assessment in limited scrutiny cases by initiating inquiries on new issue without complying with mandatory requirements of the relevant CBDT Instruction dated 26.09.2014, 29.12.2015 and 14.07.2016. It has been stated that these instances have been viewed seriously by the CBDT and in one case the Central Inspection Team of the CBDT was tasked with examination of assessment records on receipt of allegations of several irregularities and among other irregularities it was found that no reasons had been recorded for expanding the scope of limited scrutiny, no approval was taken from the PCIT for conversion of the limited scrutiny case to a complete scrutiny case and the order sheet was maintained very perfunctorily. Further, the CBDT has recorded that this gave rise to a very strong suspicion of mala fide intentions and the Officer concerned has been placed under suspension. Therefore, it was reiterated that the Assessing Officer should abide by the Instructions of CBDT while completing limited scrutiny assessment and should be scrupulous about maintenance of note sheets in assessment folders.

In support reliance is placed on the decision of The Hon'ble ITAT, Visakhapatnam Bench Vudatha Vani Rao v. Income-tax Officer [[2024]

159 taxmann.com 1394 (Visakhapatnam - Trib.)] wherein the court held as under: [Refer page 23-25 of paper book]

“2. Brief facts of the case are that the assessee, an individual, deriving income from saree designing, filed her return of income for the A.Y.2017-18, admitting total income at Rs.3,54,500/- for the A. Y. 2017-18. The case was selected for limited scrutiny under CASS to examine the cash deposit during demonetization period. Subsequently, statutory notices u/s 143(2) and 142(1) of the Act were issued and served on the assessee along with questionnaire, calling for information through ITBA on 29.04.2019 to explain the sources for the cash deposits made during demonetization period along with documentary evidence.

.....
.....

In view of the foregoing facts and circumstances of the cases, I am inclined to give further relief of Rs. 5,00,000/- for the cash deposits of Rs. 1,00,000/- and Rs. 4,00,000/- made on 05.11.2016 and 08.11.2016 before demonetization period, since it was beyond the scope of the notice issued u/s 143(2) dated 21.09.2018 for which the assessee's case was selected for limited scrutiny under CASS to examine the deposits made during demonetization period and uphold the remaining addition of Rs. 3,30,000/- (8,30,000 - 5,00,000) as the assessee failed to establish the identity, genuineness and creditworthiness of the transactions during demonetization period, by filing proper evidences before me. Accordingly, the grounds raised by the assessee are partly allowed.”

In view of the above, the assessment order passed by the Ld.AO is bad in law and is liable to be quashed”.

7. Ld. Counsel for the assessee on the strength of his written note drew our attention towards first page of the assessment order. He submitted that a perusal of the first paragraph would indicate that this case was selected for a limited scrutiny because the ld. Assessing officer has made the following observation:-

“This return was selected for scrutiny in (CASH) on the issue of cash deposit during demonetization period”.

In order to demonstrate as to how this return was selected for a limited scrutiny, ld. Counsel for the assessee drew our attention towards CBDT Instruction No. 225/157/2017/ITA-II dated 23.06.2017. In this Instruction, CBDT has laid down the proforma required to be used by the tax authorities while appraising the assessee whether his case is being selected for limited scrutiny or full scrutiny. Such proforma reads as under:-

*"F. No. 225/157/2017/ITA.II
Government of India
Ministry of Finance
Department of Revenue (CBDT)
North Block, New Delhi, dated the 23rd of June, 2017*

To
All Pr. CCsIT/Pr. CCIT (International Tax)/CCIT(Exemptions)/
Pr. DsGIT

Sir/Madam
Subject: - Issue of notices under section 143(2) of Income-tax Act,
1961 in revised format-regd.-

With reference to the above, I am directed to state that Central Board of Direct Taxes has decided to modify format of notice(s) issued under section 143(2) of the Income-tax Act which intimate the concerned assessee about selection of his/her case for scrutiny. This has become necessary in view of Board's decision to utilize 'E-Proceeding' facility for electronic conduct of assessment proceedings in a widespread manner from this financial year.

2. *The three formats of notice(s) are:
Limited Scrutiny (Computer Aided Scrutiny Selection)
Complete Scrutiny (Computer Aided Scrutiny Selection)
Compulsory Manual Scrutiny*

The revised format of 143(2) notice(s) with a note on benefits & Procedures of 'E-Proceeding' facility are enclosed for information of the field authorities.

3. *I am further directed to state that all scrutiny notices under section 143(2) of the Act, shall henceforth, be issued in these revised formats only. The Systems Directorate is effecting necessary changes in the ITBA module in this regard.*

4. *The above may be brought to the notice of all for necessary compliance.*

*Limited Scrutiny (Computer Aided Scrutiny Selection)
Notice under Section 143(2) of the Income-tax Act. 1961*

PAN No:.....

Dated:.....

To

Sir/Madam

This is for your kind information that the return of income for Assessment Year filed vide ack. No.....on..... has been selected for Scrutiny. Following issue(s) have been identified for examination:

2. In view of the above, I would like to give you an opportunity to produce any evidence/information which you feel is necessary in support of the said return of income on or before.....

3. The abovementioned evidence/information is to be furnished online electronically in 'E-Proceeding' facility through your account in e-Filing website of Income-tax Department. Further proceedings shall also be conducted electronically (*). A brief note on salient features of 'E-Proceeding' is enclosed.*

4. In case you do not wish to produce any evidence/information, as mentioned in para 2, you are requested to intimate the same electronically on or before.....

5. Specific questionnaires/requisition of information or documents would be sent subsequently, if required.

6. Para(s) (2) to (4) are applicable if you have an account in e-Filing website of Income-tax Department. Till such an account is created by you, assessment proceedings shall be carried out either through your e-mail account or manually (if e-mail is not available).

() Subject to exceptions as per the enclosed note*

Yours faithfully,

Seal

(Name of the Assessing Officer)

(Designation)

(Telephone No./Fax No.)

(E-mail ID)

*Complete Scrutiny (Computer Aided Scrutiny Selection)
Notice under Section 143(2) of the Income-tax Act, 1961*

PAN No:.....

Dated:.....

To

Sir/Madam

Dated:

This is for your kind information that the return of income for Assessment Year..... filed vide ack. No..... on.....has been selected for Complete Scrutiny.

2. In view of the above, I would like to give you an opportunity to produce any evidence/information which you feel is necessary in support of the said return of income on or before.....

3.The abovementioned evidence/information is to be furnished online electronically in 'E-Proceeding' facility through your account in e-Filing website of Income-tax Department. Further proceedings shall also be conducted electronically (). A brief note on salient features of 'E-Proceeding' is enclosed.*

4.In case you do not wish to produce any evidence/information, as mentioned in para 2, you are requested to intimate the same electronically on or before.....

5.Specific questionnaires/requisition of information or documents would be sent subsequently, if required.

6.Para(s) (2) to (4) are applicable if you have an account in e-Filing website of Income-tax Department. Till such an account is created by you, assessment proceedings shall be carried out either through your e-mail account or manually (if e-mail is not available).

() Subject to exceptions as per the enclosed note*

Yours faithfully,

Seal

(Name of the Assessing Officer)

(Designation)

(Telephone No./Fax No.)

(E-mail ID)

Compulsory Manual Selection

Notice under Section 143(2) of the Income-tax Act, 1961 PAN No:

Dated:.....

PAN No:

Dated:

To

Sir/Madam

This is for your kind information that the return of income for Assessment Year filed vide ack. No..... on..... has been selected for Scrutiny on the basis of parameter at Para 1() of Manual Compulsory Guidelines of CBDT issued vide Instruction No.....dated

2.In view of the above, I would like to give you an opportunity to produce any evidence/information which you feel is necessary in support of the said return of income on or before.....

3.The abovementioned evidence/information is to be furnished online electronically in 'E- Proceeding' facility through your account in e-Filing website of Income-tax Department. Further proceedings shall also be conducted electronically (). A brief note on salient features of 'E- Proceeding' is enclosed.*

4.In case you do not wish to produce any evidence/information, as mentioned in para 2, you are requested to intimate the same electronically on or before.....

5.Specific questionnaires/requisition of information or documents would be sent subsequently, if required.

6.Para(s) (2) to (4) are applicable if you have an account in e-Filing website of Income-tax Department. Till such an account is created by you, assessment proceedings shall be carried out either through your e-mail account or manually (if e-mail is not available).

7.In cases where order has to be passed under section 153A/153C of the Income-tax Act, 1961 read with section 143(3), assessment proceedings would be conducted manually.

(Subject to exceptions as per the enclosed note*

Yours faithfully,

Seal

(Name of the Assessing Officer)

(Designation)

(Telephone No./FAX No.)

E-mail ID".

8. Ld. Counsel for the assesee further appraised us as to how notices under section 142(1)(ii) & (iii) of the Act are also required

to be issued. Copy of the notice issued under section 143(2) dated 24.09.2018 is placed at pages no. 9 to 12 of the paper book. The heading of this notice do contemplates that it was issued for scrutiny under Computer Aided Scrutiny Selection System. The notice was issued on 24.09.2018 i.e. after the Board Circular dated 23.06.2017, whereby a format was laid down by the Board to be used by the ld. Assessing Officer. He further contended that a perusal of the assessment order would indicate that the case of the assessee was selected for limited scrutiny i.e. for verifying the cash deposits during demonetization. If scope of this limited scrutiny is required to be extended, then appropriate approval from the competent authority was required to be taken by the ld. Assessing Officer, otherwise he cannot enlarge the scope of the assessment. The Board has issued an Instruction bearing No. 5 of 2016, where it has been propounded that if a return was selected for limited scrutiny and the scope is to be enlarged, then, the ld. Assessing Officer is required to adopt the procedure as formulated in Instruction No. 5 of 2016, which reads as under:-

"Instruction No. 5/2016

*Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes*

North Block, New Delhi, the 14th of July, 2016

Subject: Direction regarding scope of enquiry in cases under 'Limited Scrutiny' selected through CASS 2015 & 2016-regd.-

Vide Instruction No.20/2(J15 dated 29.12.2015 in File of even number, Board has laid down Standard Operating Procedure for handling of cases under 'Limited Scrutiny' which were selected through Computer Aided Scrutiny Selection in 'CASS Cycle 2015'. In these cases, it was stated that the general scope of enquiry in scrutiny proceedings should be restricted to the relevant parameters which

formed the basis for selecting the case for scrutiny. However, in revenue potential cases, it was further provided that 'Complete Scrutiny' could be conducted, if there was potential escapement of income above a prescribed monetary limit, subject to the approval of administrative Pr. CIT/CIT/Pr. DIT/DIT.

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'⁷ in a case which was originally earmarked for 'Limited Scrutiny'⁷, 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'⁷ after following the procedure outlined above, the AO may examine the additional issues besides the issue(s) involved in 'Limited Scrutiny'⁷. The AO shall also expeditiously intimate the taxpayer concerned regarding conducting 'Complete Scrutiny' in such cases.

5. It is also clarified that once a case has been converted to 'Complete Scrutiny', the AO can deal with any issue emerging from ongoing scrutiny proceedings notwithstanding the fact that the reason for such issue have not been included in the Note.

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.

8.The contents of this Instruction may be brought to the notice of all for necessary compliance.

9.Hindi version to follow.

*Sd/-
(Rohit Garg)
Deputy Secretary to the Government of India”.*

9. Since in this case ld. Assessing Officer has not taken due care for converting the limited scrutiny to a full scrutiny, therefore, assessment order is not sustainable. For buttressing his contention, he relied upon the judgment of the Hon'ble Jurisdictional High Court in the case of Principal Commissioner of Income Tax -vs.- Weilburger Coatings (India) (P.) Limited reported in 155 taxman.com 580, 296 ITR 205, [2024] 463 ITR 89.

10. On the other hand, ld. D.R. relied upon the order of ld. Assessing Officer and submitted that perusal of page no. 9 of the paper book, wherein copy of the notice under section 143(2) has been placed, would reveal that no expression exhibiting the limited scrutiny is being used by the ld. Assessing Officer. The notice would indicate that the case was selected for scrutiny assessment.

11. We have duly considered the rival contentions and gone through the record carefully. At the cost of repetition, we deem it necessary to take note of the format propounded by the CBDT for

the use of ld. Assessing Officer while issuing notice under section 143(2) in a limited scrutiny case. Paragraphs 1 & 2 of this format are being emphasized by us, which read as under:-

Limited Scrutiny (Computer Aided Scrutiny Selection)

Notice under Section 143(2) of the Income-tax Act. 1961

PAN No:.....

Dated:.....

To

Sir/Madam

This is for your kind information that the return of income for Assessment Year filed vide ack. No.....on..... has been selected for Scrutiny. Following issue(s) have been identified for examination:

2. In view of the above, I would like to give you an opportunity to produce any evidence/information which you feel is necessary in support of the said return of income on or before.....

12. A perusal of the above format would indicate that though in the heading, it exhibits limited scrutiny (Computer Aided Scrutiny Selection) but thereafter in the first paragraph, it only talks of scrutiny and then in second paragraph, it talks upon the opportunity being provided to the assessee what he wants to say in support of the return. It is pertinent to observe that in para one, the ld. AO has to identify the issues for examination. If this proforma is being read with the first paragraph of the assessment order, then, it would reveal that in the third line of the first paragraph, ld. Assessing Officer has used the expression “this return was selected for scrutiny in “CASH” on the issue of cash deposits during demonetization period”. It would indicate that the case was selected for scrutiny but for the issue of cash deposit during demonetization, this mention of the issue would indicate that it was for a limited purpose of scrutinizing the cash deposits

during demonetization. Its scope for making other additions would only be enlarged by following due procedure laid down by the CBDT vide its Instruction No. 5 (reproduced supra).

13. The Hon'ble Jurisdictional High Court had an occasion to consider an identical situation in the case of Weilburger Coatings (India) (P.) Limited (supra), wherein Tribunal has followed the CBDT's Instruction bearing No. 5 of 2016. The questions before the Hon'ble High Court were –

(a) whether in the facts and circumstances of the case and in law, the ld. Tribunal has committed substantial error in law in deleting the disallowance of carry forward of losses of earlier years?

(b) whether the Learned Tribunal has substantially erred in law in holding that the Assessing Officer exceeded his jurisdiction in enquiring into those issues which were beyond the scope of limited scrutiny, without taking into consideration the fact that the claim of the assessee pertaining to carried forward losses was inadmissible since the beginning itself and therefore the Assessing Officer was justified in disallowing the same without converting the case into complete scrutiny?

These questions have been decided in favour of the assessee and against the revenue. The Hon'ble High Court concurred with the ITAT that due procedure was not followed while converting limited scrutiny case to a full scrutiny.

14. Similarly, the order of the ITAT, Visakhapatnam Bench in the case of Vudatha Vani Rao -vs.- Income Tax Officer reported in [2024] 159 taxmann.com 1394 (Visakhapatnam) was relied upon by the ld. Counsel for the assessee. This 'SMC' order of the ITAT is also in the line of Hon'ble High Court's decision. The ld. Assessing

Officer has not made any addition of cash deposit during demonetization period. The assessee has deposited small amounts, which have been accepted by the Id. Assessing Officer. Therefore, the assessment order itself is not sustainable because it has been passed by the Id. Assessing Officer by exceeding his limited powers. The Id. Assessing Officer ought to have followed the procedure contemplated in CBDT Instruction bearing No. 5 of 2016 for converting a limited scrutiny assessment into a full scrutiny. Accordingly, we quash the assessment order. Since we have quashed the assessment order, therefore, we do not deem it necessary to adjudicate the other issues on merit because they become academic in nature. Accordingly, we allow the appeal of the assessee.

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

Order pronounced in the open Court on 19/11/2024.

Sd/-

(Rajesh Kumar)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President

Kolkata, the 19th day of November, 2024

*Copies to :(1) Srimanta Kumar Shit,
Rangamalaput, Junput-Contai,
Purba Medinapore-721450, West Bengal*

*(2) Assistant Commissioner of Income Tax,
Circle-27(2), Haldia,
Basudebpur, Talpukur,
Khanjan Chak, Haldia, Midnapore-721101,
W.B.*

- (3) *Commissioner of Income Tax (Appeals),
Kolkata-22;*
- (4) *CIT - , Kolkata;*
- (5) *The Departmental Representative;*
- (6) *Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.