

आयकर अपीलीय अधिकरण न्यायपीठ, पटना।
IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH, PATNA
(Through virtual hearing at Kolkata)

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
&
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

I.T.A. No. 342/PAT/2023
Assessment Year: 2017-18

Lavanya Estates Private Limited Kasim colony Dargah Road Mahendru, Sultanganj, Patna, Bihar-800 006 [PAN : AADCL0333R]	Vs	Income Tax Officer, Ward 2(1), Lok Nayak Bhawan, Dakbanglow, patna-800 001
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Soumitra Choudhury, AR
Revenue by :	Shri Ajay Kr. Shukla, DR

सुनवाई की तारीख/Date of Hearing : 23.10.2024
घोषणा की तारीख /Date of Pronouncement : 18.11.2024

आदेश/ORDER

PER SHRI RAJESH KUMAR, ACCOUNTANT MEMBER:

This appeal is filed by the Lavanya Estates Private Limited (Assessee / Appellant) against the appellate order passed by the National Faceless Appeal Centre, Delhi [hereinafter referred as Ld. CIT(A)] dated 2nd November, 2023, for Assessment Year 2017-18, whereby the appeal filed by the Assessee against the assessment order dated 25.11.2019, passed by the Income Tax Officer, Patna

(Ld. AO) under section 154 read with section 143(3) of the Income Tax Act, 1961 (the Act).

2. Besides the grounds raised in the memorandum of appeals , the assessee has also raised additional grounds before us which are reproduced hereunder

“1. For that on the facts of the case the AO was wrong in adding other points when the scrutiny was fixed on CASS basis and the only reason was huge cash deposit in demonization period, but there was no addition on the same point, therefore the whole assessment is completely arbitrary, unjustified and illegal.

2. For that on the facts of the case the AO was wrong in adding other points when the limited scrutiny was fixed on CASS basis and the only reason was huge cash deposit in demonization period, but there was no addition on the same point, therefore the whole assessment is completely arbitrary, unjustified and illegal.”

3. After hearing both the parties and perusing the material available on record, we find that the issues in the additional grounds raised by the assessee are purely legal issues the facts qua which are available in the assessment folder and do not require any further verification of facts at the level of the AO. The assessee submitted that the issue is supported by the decision of Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. Vs. CIT (1998) 229 ITR 0383, wherein it was held that the Tribunal will have the discretion to allow or not allow a new ground raised but where the Tribunal is required to consider the question of law arising from the facts which are on record in the assessment proceedings such a question should be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee. Therefore considering the facts and circumstances, we are inclined to admit the additional grounds raised by the assessee for adjudication.

4. The common issue raised in both the additional grounds is that the ld. AO has made the addition of ₹1,98,82,791/-, in respect of share capital, unsecured loan and sundry creditors without the jurisdiction for the reason that the case of the assessee was selected for limited scrutiny for huge cash deposits during demonetization period which was not converted into complete scrutiny with the prior approval of the competent authority.

5. Facts in brief are that the assessee engaged in the business of real estate filed the return of income during the year on 31st March, 2018, showing nil income. The case of the assessee was selected for scrutiny under Computer Assisted Scrutiny Selection (CASS) and the reasons for selection of scrutiny was that large cash deposits during demonetization period. Notice u/s 143(2) of the Act was issued on 22.09.2018 followed by notice u/s 142(1) along with the questionnaire which were replied by the assessee. Finally, the ld. AO has not made any addition in respect of cash deposits by the assessee in its bank account as alleged in the notice issued u/s 143(2). The AO made three additions; namely, ₹5,00,000/- for share capital, ₹25,79,791/- for Unsecured loans and ₹84,03,000/- for Sundry Creditors, aggregating to ₹1,9,82,781/- in the assessment framed u/s 143(3) of the Act dated 25th November, 2019 without converting the limited scrutiny into complete scrutiny with the approval of the competent authority during the assessment proceedings and the assessment was framed as such.

6. On the other hand, the ld. DR supported the orders of the lower authorities and submitted that it was not mentioned on the face of the notice issued u/s 143(2) of the Act dated 22nd

September, 2018, where the scrutiny is limited or the complete scrutiny, however, the cass selection reason and issue states that the reasons for selection was for cash deposits during demonetization period. The DR therefore stated that it is not the case of limited scrutiny but a complete scrutiny and the ld. AO has jurisdiction to investigate and enquire into any issues which the AO came cross during the course of assessment proceedings and thus had the jurisdiction to make the addition which were found to be not allowable under the Act. Therefore, prayed that the addition made by the AO are very much justified and the additional ground raised by the assessee may kindly be dismissed.

7. After hearing the rival contentions and perusing the materials available on record. We find that the case of the assessee was selected under Computer Assisted Scrutiny Selection (CASS) for scrutiny to examine the issue that the assessee has deposited huge cash into its bank account during demonetization period though it was not stated in the notice that whether it was limited scrutiny or complete scrutiny. The case of the assessee supported by the decision of Tribunal, Delhi Bench in case of Dev Milk Foods Pvt. Ltd. Vs. ACIT in ITA No. 6767/Del/2019 dated 12.06.2020, 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 29 th 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. DGIT VIF/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 these 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 was merely 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 assesseees 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.

6.8 Since, we have quashed the assessment order as being nullity, the other grounds raised by the assessee became academic in nature and are not being addressed to.

8. We note that the facts of the case before us are materially similar to the facts of the case as decided by the co-ordinate Bench in case of Dev Milk Foods Pvt. Ltd. (supra). We considering the facts of the assessee's case and in the light of the decision, we are of the view that it is a case of limited scrutiny which was not converted into complete scrutiny in terms of CBDT Circular no.5 of 2016 and therefore, the additions made by the ld. AO are without jurisdiction and invalid. Accordingly, we are inclined to hold that the assessment order passed by the AO is invalid. Accordingly, the appeal of the assessee is allowed on the additional ground.



9. Since, we have allowed the additional ground in favour of the assessee, the other grounds raised by the assessee in the memorandum of appeals are not being adjudicated at this stage and are being left open to be decided at later stage if the need arises for the same in future.

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

Order pronounced in the Court on 18th November, 2024 at Kolkata.

Sd/-

**(RAJPAL YADAV)
VICE PRESIDENT**

Kolkata, Dated 18.11.2024

***SS, Sr.Ps**

Sd/-

**(RAJESH KUMAR)
ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , पटना/DR,ITAT, PATNA,
6. गार्ड फाईल /Guard file.

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आदेशानुसार/ BY ORDER,

**Sr. PS/ Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, पटना**