

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G': NEW DELHI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
AND  
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.7591/Del/2019  
(ASSESSMENT YEAR 2016-17)**

Sarbinder Singh Bindra 362, 2 <sup>nd</sup> Floor, Naya Katra, Chandni Chowk, Delhi-110006. PAN-AAEPB2783P	Vs.	Asst. CIT, Circle-47(1), Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. Satyen Sethi, Advocate & Sh. A.T. Panda, Advocate	
Department by	Sh. Sahil Kumar Bansal, Sr. DR	
Date of Hearing		04/02/2025
Date of Pronouncement		19/02/2025

**ORDER**

**PER MANISH AGARWAL, AM:**

This is appeal filed by the Assessee against the order of Ld. Commissioner of Income Tax (Appeals)-16, New Delhi ('Ld. CIT(A)' for short) in Appeal No.10308/2018-19 dated 07/08/2019 for Assessment Year 2016-17.

2. The assessee has challenged the appellate order on the following grounds of appeal:

*“1. That on the facts and in the circumstances of the case and in law, the learned CIT (Appeals) has erred in wrongly confirming the disallowance out of interest expenditure of Rs.1,13,15,755/- paid to banks on working capital loans, though this issue was not in the scope of limited scrutiny and is against the circulars and instruction of CBDT.*

*“2. That on the facts and in the circumstances of the case and in law;*

*a) The learned CIT (Appeals) has erred in confirming the disallowance of interest of Rs.1,13,15,755/- paid to banks on working capital loans, wrongly considered the whole amount as used for purchase of immovable property.*

*b) The learned CIT (Appeals) has erred in rejecting our submission that the immovable property purchased is out of own funds and capital of the business.*

*c) The learned CIT (Appeals) has erred in rejecting our submission that the commercial property purchased has been used by us for our business for which the documentary evidence was produced.*

*3. That on the facts and in the circumstances of the case and in law, the learned CIT (Appeals) has erred in not disposing the following ground of appeal taken before her.*

*"Notwithstanding the above grounds, that on the facts and in the circumstances of the case and in law, the assessing authority has erred in wrongly quantified the disallowance of interest paid to bank which is also excessive".*

3. The first ground of appeal is relation to the completion of assessment outside the scope of limited scrutiny and is against the circulars and instruction of CBDT.

4. Brief facts of the case are that the assessee is an individual and proprietor of M/s TSB Overseas. The return of income was filed on 06/09/2016 declaring a total income of Rs.1,53,94,250/-. The assessment was taken up for limited scrutiny and the assessment was finally concluded vide order dated 26/12/2018 passed u/s

143(3) of the Act ('the Act' for short), wherein an addition of Rs.1,33,85,998/- was made by holding that the interest expenses claimed by the assessee includes the interest expenses for purchase of capital assets not used for business purposes. The assessee, thereafter, filed an appeal before Ld. CIT(A). In the meantime, an application u/s 154 of the Act was also filed before the AO claiming that part of the payment towards purchase of property were made in the preceding year, therefore, interest to that extent should not be disallowed. The AO vide order passed u/s 154 r.w.s 143(3) of the Act dated 02/08/2019 reduced the amount of disallowance of interest expense from Rs.1,13,15,755/- to Rs.99,19,025/-.

5. In first appeal, the Ld. CIT(A) has not accepted the contentions of the assessee, therefore, the appeal is filed before us.

6. During the course of hearing, the Ld. AR submitted that the case of the assessee was selected for limited scrutiny and the reasons for limited scrutiny are at page -1 of the assessment order according to which case of the assessee was selected under CASS for three issues. One of such issue is "whether investment and income relating to property was duly disclosed". Ld. AR of the assessee submit that the addition had been made by making disallowance out of the interest expense which is not forming part of the reason for limited scrutiny. Therefore, without taking proper approval of converting the limited scrutiny in terms of CBDT direction, the AO has extended his jurisdiction. He therefore prayed that the additions so made

which are outside the scope of limited scrutiny be deleted. In this regard, the AR of the assessee has also made a written submissions which is as under:

"Submissions on Ground No.1

*I. By Instruction No.5/2016 dated 14.7.2016, CBDT partially modified the Instruction No.20/2015 dated 29.12.2015, as under (page 130-131 of PB II):*

- (a) The AO while forming reasonable view of converting "limited scrutiny" to "complete scrutiny" was to ensure that 'there exists credible material/information', 'absence of suspicion, conjecture, unreliable source' and 'direct nexus between the material and formation of the view', specified in para 3 of Instruction No.5/2016.*
- (b) Only upon conversion of case into 'complete scrutiny' after following the procedure Le with the approval of Pr. CIT/CIT, the AO may examine the additional issues besides the issue(s) involved in 'Limited Scrutiny' [para 4 of Instruction No.5/2016].*
- (c) Once a case has been converted to 'complete scrutiny', the AO can deal with any issue emerging from ongoing scrutiny proceedings [para 5 of Instruction No.5/2016].*
- (d) 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 of inspection by the administrative authorities [para 6 of Instruction No.5/2016].*

*II. DGIT (Vigilance) vide letter dated 30.11.2017 taking note of unauthorized expansion of scope of limited scrutiny, stated that irregularities such as, (i) non recording of reasons for expanding the scope of limited scrutiny, (ii) not taking approval from PCIT for conversion of limited scrutiny case to a complete scrutiny case and (iii) perfunctorily maintaining of order sheet would be viewed seriously, for it gave rise to suspicion of mala fide (page 11 of PB).*

*III. Instructions of CBDT required the Assessing Officer to exercise the power to convert 'limited scrutiny' to 'complete scrutiny' in the manner specified. It is settled that "when a statute requires, a thing to be done in a certain manner, it shall be done in that manner alone and not otherwise". Reference*

*in this regard is made to Sunil Kumar Sharma v. Dy. CIT (2022) 448 ITR 485, wherein Hon'ble Karnataka High Court has quoted the following observations of Hon'ble Supreme Court in OPTO Circuit India Ltd. v. Axis Bank AIR 2021 SC 753:*

*"15. This Court has time and again emphasised that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner. Among others, in a matter relating to the presentation of an Election Petition, as per the procedure prescribed under the Patna High Court Rules, this Court had an occasion to consider the Rules to find out as to what would be a valid presentation of an Election Petition in the case of Chandra Kishor Jha v. Mahavir Prasad and Ors. (1999) 8 SCC 266 and in the course of consideration observed as hereunder:*

*"It is a well settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner".*

*IV. Without prior approval of Pr. CIT, the AO cannot widen the scope of limited scrutiny. No disallowance that is beyond the issues on which the case was selected for scrutiny can be made without approval, which has not been taken in the present case. Reliance is placed on:*

- (i) Urban Improvement Co. (P) Ltd. v. ITO [ITA No.7496/Del/2019 dated 7.2.2020]*
- (ii) Rajnikanth S. Bhalavat v. ACIT [ITA No.495/Ahd/2019 dated 23.12.2022]*
- (iii) Shri Amit Kumar Dey v. DCIT [ITA No.5526/Del/2018 dated 30.3.2021]*
- (iv) Danone Asia Pte Ltd. v. ACIT [ITA No.376/Del/2021 dated 29.11.2022]*
- (v) ACIT v. Trehan Promoters & Builders P. Ltd. [ITA-9872/D/2019 dated 19.10.2022]*

*In Pr. CIT v. Shark Mines and Minerals (P) Ltd. (2023) 151 taxmann.com 71 (Ori), assumption of jurisdiction under section 263 beyond the scope of limited scrutiny was quashed and this Hon'ble Tribunal in Shri Amit Kumar Dey (supra), enhancement made by CIT(A) on issue beyond the scope of limited scrutiny was depreciated observing that:*

*"This will amount to bypassing the above quoted instructions of the CBDT. It also shows that if that happens then without obtaining the approval of Commissioner of Income Tax and CCIT, the whole assessment of the assessee remains open, despite the fact that the learned assessing officer has looked into the issues contained in the limited scrutiny notice. We do not find such an intention of the CBDT in issuing the instructions of limited scrutiny case."*

*As the indirect bypassing of Instruction has been held to be impermissible, hence, on same principle, the IAC cannot bypass the Instruction.*

7. On the other hand, the Ld. Sr. DR supported the orders of the lower authorities and submitted that the additions has been made by making disallowance of interest on the amount utilized out of the borrowed fund for acquisition of the property. Since one of the reason recorded was whether investment and income relating to property are duly disclosed, thus, the Assessing Officer has complete jurisdiction of verifying the amount of investment, and the action of the AO in disallowing was well within scope of limited scrutiny and she prayed accordingly.

8. We have heard the rival submissions and perused the material available on record. The case of the assessee was selected for limited scrutiny under CASS on following issues: -

*"1. Whether outside foreign remittance is from disclosed sources and appropriate withholding and reporting obligations have been complied with.*

*2. Whether sales turnover/receipts has been correctly offered for tax.*

*3. Whether investment and income relating to properties are duly disclosed.”*

One of reason for limited scrutiny is in relation to the issue of investment relating to property and whether it is duly disclosed or not. In the year under appeal, assessee has acquired one property for a sum of Rs.9,60,00,000/- and after payment of the stamp duty total costs of investment of Rs.10,28,70,500/- was recorded in the books of accounts. As per the reason for the scrutiny, the Assessing Officer is bound to examine the amount of investment and, since, assessee has borrowed fund on which interest were paid and the Assessing Officer was of the opinion that such borrowed funds were utilized for acquisition of such property, therefore, to determine the correct value of investment, examination of the total cost of investment including verification of amount of interest relatable to the borrowed fund utilized for acquisition of property is well within the scope of limited scrutiny reasons. Under these circumstances, we are in agreement with the lower authorities that Assessing Officer has not extended his jurisdiction. Accordingly, the ground no.1 of the assessee's appeal is dismissed.

9. The second ground of appeal is in relation to the disallowance of Rs.1,13,15,755/- which was later reduced by Ld. Assessing Officer u/s 154 at Rs.99,19,025/-.

10. Brief facts leading to this issue are that the during the year assessee has acquired immovable property for total a sum of

Rs.10,28,70,500/-. The AO observed that the said property was not utilized for business purposes and borrowed funds of the assessee increased substantial from Rs.5.66 Cr. to Rs.15.89 Cr., therefore, the borrowed funds were utilized for acquisition of such property. By observing so, the AO has made disallowance of Rs.1,13,15,755/- out of the total interest claimed by the assessee and added to the total cost of investment.

11. Before us, Ld. AR of the assessee submitted that the assessee is having his own capital and depreciation totaling to Rs.15.29 Cr. Whereas investment in the property was of Rs.10.28 Cr. The AR of the assessee further submitted that the capital of the assessee as on 31<sup>st</sup> March, 2016 was of Rs.14.20 Cr. and the corresponding figure of opening capital as on 01<sup>st</sup> April, 2015 was of Rs.13.48 Cr. The Ld. AR further submitted that during the year under appeal, assessee has earned profit of Rs.1,05,92,431/- and claimed depreciation of Rs.3,40,484/- which were available as non-cash out going. Against this the amount of investment was 10.28 Cr. only. He further submitted that the sale consideration was paid during the period starting from 15<sup>th</sup> May to 15<sup>th</sup> July. Ld. AR submitted that the OD account from which the payments were made is regular account of the assessee where regular business receipts were credited and payments were debited and common funds i.e., business as well as borrowed funds are utilized towards the payments for the acquisitions of property. He thus, prayed that no disallowance should be made as the assessee is having sufficient investment funds in the



shape of his own capital. In the alternate, the Ld. AR submitted a working of amount that could be disallowed which is available at PB 45 to 46. According to which maximum disallowance could be of Rs.46,28,801/-. The assessee has also relied on following case laws wherein it has been held that where the assessee is having own funds in excess of the investment made, no disallowance of interest could be made, the same are as under:

- (i) *Woolcombers of India Ltd. v. CIT* (1982) 134 ITR 219 @ 227 (Cal).
- (ii) *Alkali and Chemical Corporation of India Ltd. v. CIT* 161 ITR 820 (Cal).
- (iii) *CIT v. Hotel Savera* (1999) 239 ITR 795 @799-800 (Mad)
- (iv) *CIT v. Radico Khaitan Ltd.* (2005) 274 ITR 354 @ 365-366 (All)
- (v) *CIT v. Britannia Industries Ltd.* (2006) 280 ITR 525 @ 532-534 (Cal)

*In CIT v. Reliance Utilities and Power Ltd.* (2009) 313 ITR 340, Hon'ble Bombay High Court has held that where the investments were out of mixed funds and interest free funds were sufficient to meet the investments, a presumption would arise that investments were out of interest free funds. Hon'ble Supreme Court in *East India Pharmaceutical Works Ltd. vs. CIT* (1997) 224 ITR 627, *Munjal Sales Corporation v. CIT* (2008) 298 ITR 298 and *South India Bank Ltd. vs. CIT* (2021) 438 ITR 1 has also approved the mixed fund theory, inasmuch, in *South India Ltd. (supra)*, it has been held by the Apex Court that no disallowance of interest cannot be made where non-interest bearing funds are more than the investment made in tax free securities.

12. On the other hand, the Ld. SR. DR vehemently supported the orders of the lower authorities and submitted that assessee has purchased property which was shown as personal property in the statement of assets attached to the balance sheet, thus, it cannot be claimed that the property was acquired and used for business purposes. The assessee has failed to establish the nexus between

interest free funds vis-à-vis investment in acquisition of property. On the other hand, entire payments were made from out of the OD account on which interest was paid on credit balance. The Ld. SR. DR further submitted that the perusal of the OD account submitted before us revealed that this account always contained negative balance meaning OD limit was utilized by the assessee and interest was paid. If payments of Rs.10.28 Cr. towards acquisition of property was not made, that account should not have the negative balance. This clearly shows that the borrowed funds were utilized in acquisition of the property and nexus between borrowed funds and investment made is clearly established. The Ld. Sr. DR, thus, prayed for the confirmation of the addition so made.

13. We have heard the rival submissions and perused the material available on record. In the instant case, it is an admitted fact that the assessee has acquired one immovable property for which out of total purchase consideration of Rs.9,60,00,000/-, Rs.45,00,000/- was paid in preceding year and balance amount was paid during the year under appeal. It is also undisputed fact that the entire payments were made out of OD account of the assessee. During the course of hearing necessary verification was made by us about the clearing of various cheques, which were cleared from the OD account of the assessee. Now the sole issue for consideration is that whether borrowed funds were utilized for making investment or assessee's own interest free funds were utilized. The bare perusal of the OD account of the

assessee clearly shows that when first payment of Rs.4.00 Cr. was made on 01/05/2015 there was negative opening balance of Rs.83,57,669/- and when the last payment of Rs.50 lac was made on 30<sup>th</sup> July, 2015, the closing balance of OD account was Rs.6,76,03,590/. Thus, the borrowed funds in OD account were increased by almost Rs.6,00,00,000/- as a result of payment towards the acquisition of the property. Though, there are various debit and credit entries pertaining to regular business transactions, however, besides these business transactions, total amount of Rs.9,80,00,000/- was further debited in the same account. If we exclude the payments of 9.80 Cr. from this OD accounts, there would be positive balance on which no interest would be payable by the assessee. Therefore, direct nexus between borrowed fund utilized in making investment in immovable property is established. All the judgements relied upon by the assessee are related to cases where mix funds were involved and it could not be quantified that how much borrowed fund utilized for making investment, therefore, the Courts held that the presumptions would be that investment be made out of interest free funds which are higher than the amount of investment. As observed above, in the instant case, from the perusal of the OD account statement of the assessee, it is clear that by making payments of purchases consideration for acquisition of the property, the amount of OD limit utilized by the assessee increased substantially, therefore, it is case where borrowed funds were directly

utilized and nexus is established. Thus, the ratio laid down in those judgments, is not applicable to the instant case.

14. Now coming to the quantum of disallowance, we find substance in the alternate argument of the assessee, where the assessee at PB -45 has made a detailed working of the amount available with him and utilized for acquisition of the property and as per assessee own working, the maximum amount of interest pertaining to the amount utilized out of the borrowed fund could be Rs.46,28,801/- only. Therefore, by accepting the alternate prayer of the assessee, the disallowance is restricted to the amount of 46,28,801/-. Accordingly, ground No.2 & 3 are partly allowed.

15. In the result, the appeal of the Assessee is partly allowed.

Order pronounced on 19/02/2025.

Sd/-  
**(VIKAS AWASTHY)**  
**JUDICIAL MEMBER**

Dated: 19/02/2025

PK/PS

Copy forwarded to:

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

Sd/-  
**(MANISH AGARWAL)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI