

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 74/CHNY/2025

निर्धारण वर्ष/Assessment Year: 2020-21

Shri Yelamarthi Satya Anand,
No.36/2B, Perumal Koil Street,
Kotturpuram - 600 085.

**The Deputy Commissioner of
Income Tax,**
Vs. Central Circle - 2(2),
Chennai.

PAN: AAHPA 7898K
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri R. Venkata Raman, CA
: Ms. Anitha, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 24.07.2025

घोषणा की तारीख/Date of Pronouncement

: 22.08.2025

आदेश /O R D E R

PER MANU KUMAR GIRI, JM:

This appeal filed by the assessee is directed against the order of the Ld. Commissioner of Income Tax(Appeals), Chennai-19 [hereinafter the "Ld.CIT(A)"] dated 25.11.2024 arising out of the order dated 27.09.2022 passed by the Deputy Commissioner of Income Tax, Central Circle - 2(2), Chennai (hereinafter referred to as the "AO") passed u/s.143(3) of the Income-tax Act, 1961

(hereinafter "the Act") for the Assessment Year 2020-21 (hereinafter the "AY").

2. The assessee has raised the following grounds of appeal:-

1. That the Learned Commissioner of Income Tax (Appeals) - 19, Chennai is not justified in upholding the assessment order dated 27.09.2022 passed by the Assessing Officer u/s.143(3) of the Act.

2. That the Ld. CIT(A) erred in not appreciating that the case of the appellant was selected for compulsory scrutiny in violation of the CBDT guidelines issued vide Circular No. F.No.225/81/2022/ITA-11 dated 11.05.2022 (as modified on 03.06.2022) and consequently the impugned assessment is bad in law.

3. Without prejudice to the above, that the Ld. CIT(A) is not justified in sustaining the addition of Rs.1,00,00,000/- made by the Assessing Officer u/s.2(22)(e) of the Act.

4. That the Ld. CIT(A) failed to appreciate that the provisions of section 2(22)(e) of the Act are not applicable to the facts and circumstances of the case of the appellant.

5. Without prejudice to the above grounds, that the Ld. CIT(A) ought to have appreciated that there cannot be any addition in the hands of the appellant in view of provisions of section 10(34) r.w.s 115-O of the Act.

6. That the Ld. CIT(A) erred in holding that the provisions of section 10(34) of the Act are applicable only upon the payment of tax as stipulated in section 115-0 of the Act in as much as the said amendment is applicable only from AY 2021-22 and not the impugned assessment year.

3. Brief facts of the case are as under:

The assessee is an individual holding 25% of shares and a directorship in the company M/s. Intex Solutions Private Limited (hereinafter referred to as "Intex"). For the impugned assessment year, the appellant filed his return of income originally on 31.08.2020 declaring a total income of Rs.40,00,670/-.

Subsequently, a revised return of income was filed on 21.05.2021 admitting the same total income as originally returned. A search action u/s. 132 of the Act took place in the case of M/s. IG3 Infra Limited (hereinafter referred to as "IG3"). In connection with the transactions between Intex and IG3, the appellant along with the other director Shri V Sudhakaran were summoned by the DDIT (Investigation), on 19.01.2021. During the course of summons, DDIT (Inv) observed from the bank account of Intex that the company has transferred Rs.1 crore each to the appellant and Shri V Sudhakaran on 24.09.2019. In response to the query regarding the nature of payment, it was deposed by the appellant that Rs.1 crore was an advance received from Intex towards the sale of office building situated at No.2, Sardar Patel Road, Gokul Arcade, 4th Floor, Chennai - 600020, jointly owned by the appellant and Shri V Sudhakaran. On the date of summons, registration of the property was not complete as there was a delay in execution of sale deed due to COVID outbreak. However, registered sale deed was executed on 01.04.2022 i.e. prior to issuance of notice u/s.143(2) of the Act. Subsequently, on 10.02.2022, the case of the appellant has been centralized and accordingly transferred to the jurisdiction of the Deputy Commissioner of Income Tax, Central Circle - 2(2), Chennai.

The AO took a view that the advance of Rs.1 crore received by the appellant from Intex towards the sale of office building is a deemed dividend taxable u/s. 2(22) (e) of the Act and accordingly selected the case of the appellant for compulsory scrutiny by issuance of a notice u/s.143(2) of the Act on 29.06.2022 followed by a notice u/s.142(1) of the Act on 14.09.2022. Thereafter, the AO completed the assessment u/s.143(3) of the Act vide order dated 27.09.2022, wherein total income of the appellant was assessed at Rs.1,40,00,670/-. In completing the assessment, the AO treated the property advance of Rs.1,00,00,000/-received by the appellant from Intex towards the sale of office building as deemed dividend taxable under the provisions of section 2(22)(e) of the Act. The following are the observations of the AO in making an addition u/s.2(22) (e) of the Act:

- i. Sale of property is an afterthought because there is a delay between the date of sale agreement and actual execution of sale deed transferring the property to Intex;
- ii Sale agreements are unregistered; and
- iii. TDS on property advance was not made by Intex within the stipulated time.

4. Aggrieved by the above addition made by the AO, appellant preferred appeal before the Ld.CIT(A), who dismissed the appeal vide the order dated 25.11.2024 sustaining the addition of Rs.1,00,00,000/- made by the AO u/s.2(22) (e) of the Act. The relevant observations of the Ld.CIT(A) are available at Para's 6.3 to 6.9 on pages 17 to 19 of the CIT(A)'s order.

5. Aggrieved by the said order, the assessee is in appeal before us submitted on the legal issues as per the submissions below:

Ground Nos.1 & 2: Selection of the appellant's case for compulsory scrutiny is in violation of the guidelines prescribed by the CBDT, hence the consequential assessment is bad in law.

The Id. AR has invited our attention to para 2 at page 2 of the assessment order, in which it was stated by the AO that the case of the appellant was selected for compulsory scrutiny. It is submitted by the Id. AR that the CBDT vide circular numbering F.No.225/81/2022/1TA-I dated 11.05.2022 modified on 03.06.2022 has issued guidelines prescribing parameters and procedure for compulsory scrutiny selection of returns during the Financial Year 2022-2023 (pages 1 to 6 of the case laws paper book). The Id. AR further submitted that the said guidelines are to be followed mandatorily by the AO in manual selection of cases for scrutiny

assessment. As per the said guidelines, only the following cases can be selected for compulsory scrutiny:

- i. Cases pertaining to survey u/s.133A of the Act;
- ii. Cases pertaining to search and seizure;
- iii. Cases where no return of income was filed in response to the notice issued u/s.142(1) of the Act;
- iv. Cases where notices u/s.148 of the Act have been issued;
- v. Cases relating to claiming of tax exemption/deduction by the Trusts/Institutions in spite of denial/cancellation/withdrawal of approvals granted u/s.12A/35(1)/10(23C) etc;
- vi. Cases involving recurring additions; and
- vii. Cases related to specific information regarding tax evasion.

He furthermore submitted that the assessee's case does not fall under either of the above parameters i.e. none of the specified criteria are applicable to the case of the appellant. Thus, the assessee's return for the impugned assessment year cannot be taken up for compulsory scrutiny assessment and accordingly the AO is not having the jurisdiction to select the case for compulsory scrutiny assessment. However, violating the CBDT's guidelines, the instant case has been selected for compulsory scrutiny assessment which is bad in law. Hence, the impugned assessment is bad in law since the AO is not having the jurisdiction to take up the case for compulsory scrutiny assessment. The Id. AR has referred the following case laws on this issue:

- CIT V. Smt. Nayana P. Dedhia [2004] 270 ITR 572 (AP);
- CIT V. Best Plastics (P.) Ltd [2007] 295 ITR 256 (Del);

- F Chougule v. JCIT in ITA No.458/PN/2012;
- Girdhar Gopal Rastogi v. CIT [2022] 142 taxmann.com 142 (Allahabad - Trib)

6. Per contra, the Id. DR submitted that there is no violation of CBDT's guidelines, in the instant case and AO rightly selected for compulsory scrutiny assessment.

7. We have heard the rival submissions and perused the record of the case and case law referred on the legal issue. We settled that the guidelines prescribed by the CBDT are binding on the AO and the selection of the case for scrutiny assessment in violation of the scrutiny selection guidelines prescribed by the CBDT invalidates such assessment. We further find that the AO in manual selection of cases for scrutiny assessment has to mandatorily comply with the criterion prescribed by the CBDT (referred supra), which has not been followed in this present case.

8. The Hon'ble Andhra Pradesh High Court in the case of *CIT V. Smt. Nayana P. Dedhia* [2004] 141 Taxman 603 (Andhra Pradesh) / [2004] 270 ITR 572 (AP) (pages 7 to 9 of the case laws paper book) relied upon the judgment of the Hon'ble Supreme Court in the case

of UCO Bank v. CIT [1988] 237 ITR 889/[1999] 104 Taxman 547 (SC) [Para 4] and Smt. Amiya Bala Paul v. CIT [2003] 262 ITR 407/130 Taxman 511 (SC), has approved the decision of the Income Tax Appellate Tribunal in holding the assessment as bad in law for selecting the case of the assessee for scrutiny against the norms laid down by the CBDT and held as under:

3. A very short question is involved. Admittedly the Department issued a circular by way of press release on March 12, 1996. These guidelines were regarding "Scrutiny assessment guidelines for assessment year 1996-97". By these guidelines, it was notified that the Income-tax Department had decided not to select returns for the assessment year 1996-97 for detailed scrutiny, if the total income declared is at least 30% more than the total income declared for the assessment year 1995-96. The case of respondent before the Tribunal was that the Department had decided not to have detailed scrutinies for the assessment year 1996-97 if the income declared was at least 30% more than the income declared in 1995-96, therefore, the assessment itself was bad. The Tribunal accepted this contention. However, the learned Counsel for appellant submits that these instructions were not binding on the Tribunal or Court or were not available for execution to any Judicial authority.

4. There is no dispute about circular having been issued, which reads as under:

"749A. Scrutiny assessment guidelines for assessment year 1996-97.

The Income-tax Department has decided not to select returns for the assessment year 1996-97 for detailed scrutiny if the total income declared is at least 30% more than the total income declared for the assessment year 1995-96.

The following further conditions should be fulfilled:

(a) the total income for both the assessment years should exceed the basis exemption limit;

(b) the total income for the assessment year 1995-96 should not exceed Rs. 5 lakhs; and

(c) tax is fully paid for the assessment year 1996-97 before the return is filed.

In these cases the taxpayers will not be required to attend income-tax offices in connection with their assessments. However, some of these cases will be scrutinized if there is positive information of tax evasion or there is a large claim of refund."

The conditions laid down in the circular are also fulfilled by the respondent and there is no dispute on that also. Now, the only question, which needs an answer is, as to what is the status of these circulars. Circular had admittedly been issued by the Central Board of Direct Taxes under section 119(1) of the Act. What is the scope of such circulars should not detain us because of the authoritative pronouncement of the Hon'ble Supreme Court in UCO Bank v. CIT [1988] 237 ITR 889 1. The Supreme Court noted:

"What is the status of these circulars? Section 119(1) of the Income-tax Act, 1961, provides that, 'the Central Board of Direct Taxes may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board. Provided that no such orders, instructions or directions shall be issued (a) so as to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or (b) so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions'. Under sub-section (2) of section 119, without prejudice to the generality of the Board's power set out in sub-section (1), a specific power is given to the Board for the purpose of proper and efficient management of the work of assessment and collection of revenue to issue from time to time general or special orders in respect of any class of incomes or class of cases, setting forth directions or instructions, not being prejudicial to assesseees, as to the guidelines, principles or procedures to be followed in the work relating to assessment. Such instructions may be by way of relaxation of any of the provisions of the sections specified there or otherwise. The Board thus has power, inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under section 119 of the Income-tax Act which are binding on the authorities in the administration of the Act. Under section 119(2)(a), however, the circulars as contemplated therein cannot be adverse to the assessee. Thus, the authority which wields the power for its own advantage under the Act is given the right to forgo the advantage when required to wield it in a manner it considers just by relaxing the rigour of the law or in other permissible manners as laid down in section 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorized as belonging to a

class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities." (p. 895)

The Supreme Court in this judgment, which is clear from the paragraph quoted above, held in no uncertain terms that:

(a)The authorities responsible for administration of the Act shall observe and follow any such orders, instructions and directions of the Board;

(b)such instructions can be by way of relaxation of any of the provisions of the section specified therein or otherwise;

(c)the Board has power inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions by issuing circulars in exercise of its statutory powers under section 119 of the Income-tax Act;

(d)the circulars can be adverse to the Income-tax Department, but still, are binding on the authorities of the Income-tax Department, but cannot be binding on assessee, if they are adverse to assessee;

(e)the authority, which wields the power for its own advantage under the Act, has a right to forego the advantage when required to wield it in a manner it considers just by relaxing the rigour of the law by issuing instructions in terms of section 119 of the Act.

This judgment leaves no room to doubt that the Tribunal was right in holding that the Income-tax authorities could have not selected the case for detailed scrutiny in view of the circular issued by the Board.

5. The learned Counsel for appellant however, relies on a judgment of the Supreme Court in Smt. Amiya Bala Paul v. CIT [2003] 262 ITR 4071. This case is not relevant for the purpose of present controversy.

6. For these reasons, the appeal is dismissed. No costs.

9. The Hon'ble Delhi High Court in the case of CIT V.Best Plastics

(P.) Ltd [2008] 169 Taxman 4 (Delhi) / [2007] 295 ITR 256 (Delhi)

also held as under:

1. The Commissioner of Income-tax and the Income-tax-Appellate Tribunal have both relied upon a decision of the Supreme Court in Commissioner of Customs v. Indian Oil Corpn. Ltd. [2004] 267 ITR 272 to have that the circulars issued by the Central Board of Direct Taxes (CBDT) binding on the officers of the Income-tax Department. To the same effect

is the decision of the Supreme Court in UCO Bank v. CIT [1999] 237 ITR 889.

2. The respondent-assessee's return was in the instant case taken up for scrutiny in violation of the Central Board of Direct Taxes circular according to which if the returned income is 30 per cent more than the income of the earlier assessment year, the case of the assessee should not be scrutinised under Instruction No. 1922, dated 9-3-1995, extended the operation of the circulars to the assessment year 1995-96 also as is evident from the following paragraphs appearing in the same :

"Under Board's Instruction No. 1917, dated 3-6-1994, certain categories of cases were kept outside the scope of sample scrutiny during the financial year 1994-95. On such category consisted of those assesseees who declared a total income for the assessment year 1994-95 that was more by 30 per cent of the total income returned for the assessment year 1993-94 subject to the conditions that :

(a)the income for both the assessment years exceeded the basic exemption limit;

(b)the total income for the assessment year 1993-94 was Rs. 5 lakhs or less; and

(c)the tax was fully paid for the assessment year 1994-95 before the return was filed.

2. Suggestions have been received to extend this scheme for the assessment year 1995-96 also. After considering them, it has been decided that the above norm of exclusion from sample scrutiny could be extended for the assessment year 1995-96 also in such cases where the following criteria are satisfied :

(i)the income returned for the assessment year 1995-96 is at least 30 per cent more than the total income returned for the assessment year 1994-95."

3. The assessment order passed by the Assessing Officer has in the light of the above been set aside by the Commissioner which order has been upheld by the Tribunal in appeal. No substantial question of law arises for our consideration in the light of the settled legal position emanating from the aforementioned judgments of the Supreme Court. This appeal accordingly fails and is hereby dismissed.

10. The decision of the Pune Bench of the Income Tax Appellate Tribunal in the case of S F Chougule v. JCIT in ITA No. 458 / PN/ 2012 wherein the ITAT has held as follows:

"... In the above circumstances, where the order has been passed against the norms laid down by the CBDT Vide its guidelines which were binding upon the Assessing officer, then the order passed by the Assessing Officer is bad in law. The instructions issued by the CBDT are to be strictly followed by the

authorities i.e. Assessing Officer and in the absence of the same, the assessment order passed in the case is annulled. Such is the proposition laid down by the Hon'ble High Court of Andhra Pradesh in CIT Vs. Smt. Nayana P. Dedhia (supra) and the Hon'ble High Court of Delhi in CIT Vs. Best Plastics (P) Ltd. (supra). In view thereof, we hold that where the Assessing Officer has failed to follow the guidelines issued for selecting the cases for scrutiny and in the facts of the present case, where the case was selected manually for scrutiny, but no previous approval of CCIT was obtained, then the Assessing Officer lacks jurisdiction to carry out the scrutiny assessment in the present case and accordingly, assessment order passed by the Assessing Officer is bad in law."

11. Further the recent decision of the Allahabad Bench of the Income Tax Appellate Tribunal in the case of Girdhar Gopal Rastogi v. CIT [2022] 142 taxmann.com 142 (Allahabad - Trib) (pages 12 to 21 of the case laws paper book), wherein the ITAT has held as under (relevant para 10 at page 21 of the case laws paper book):

"....Since the conditions as prescribed in clause (d) of para 3 of the Instruction no. 13/2013 are not satisfied therefore, the Assessing Officer was not having the jurisdiction and authority to take up the case for compulsory scrutiny. Accordingly, the initiation of the compulsory scrutiny proceedings by issuing the notice under section 143(2) dated 11-6-2013 is invalid and consequently the assessment framed by the Assessing Officer is vitiated as invalid in law. Hence, the impugned assessment framed by the Assessing Officer is liable to be quashed being passed without jurisdiction."

12. Therefore, in the light of the above settled law and in the facts of the case, we find that the AO has not mandatorily fulfilled / followed the Central Board of Direct Taxes (CBDT) Circular No. F.No.225/81/2022/1TA-I dated 11.05.2022 modified on 03.06.2022. The legal position established by the aforementioned decisions is

that the circulars and instructions issued by the Central Board of Direct Taxes (CBDT) are binding on the Assessing Authorities. It has further been held that where the CBDT has laid down specific guidelines or norms for selection of cases for scrutiny, such norms must be strictly adhered to. Any deviation from these guidelines renders the assessment proceedings null and void. Therefore, we are of the considered view that the action of the Assessing Officer in selecting the assessee's case for scrutiny is nothing but as fragrant violation of the binding circular and the resulting assessment therefore, invalid and unsustainable in law. Hence, G.No.2 of the assessee is allowed. Other grounds on merits are academic in nature hence infructuous.

13. In the result, the appeal filed by the assessee is allowed as above.

Order pronounced in the open court on 22nd August, 2025 at Chennai.

Sd/-

(एस.आर. रघुनाथा)

(S.R. RAGHUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Date: 22.08.2025

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य/JUDICIAL MEMBER

RSR

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.