

**IN THE INCOME TAX APPELLATE TRIBUNAL
GAUHATI 'E' COURT, AT KOLKATA**

BEFORE SHRI A. T. VARKEY, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.127/Gau/2019

(निर्धारणवर्ष / Assessment Year: 2014-15)

JDB Finance Gaurav Bhawan, D Neog Path, G.S. Road, Guwahati	Vs.	DCIT, Circle-3, Guwahati
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAHFJ3778M		
(Appellant)	..	(Respondent)

Appellant by : Shri Somnath Ghosh, Advocate

Respondent by : Shri Jayanta Mridha, JCIT, Sr. DR

सुनवाईकीतारीख/ **Date of Hearing** : **09/09/2020**

घोषणाकीतारीख/**Date of Pronouncement** : **16/09/2020**

आदेश / O R D E R

Per Dr. A. L. Saini:

The captioned appeal filed by the assessee, pertaining to assessment year 2014-15, is directed against the order passed by the Commissioner of Income Tax (Appeal)-2, Guwahati, in appeal no.763297561240417/432, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the 'Act') dated 09/12/2016.

2. The grounds of appeal raised by the assessee are as follows:

"1. For that Hon'ble Commissioner of Income Tax (Appeals), Guwahati-2 is not justified in rejecting the condonation of delay in filing the appeal with a so called view that the appellant was either no at all aggrieved by impugned order or was too casual.

2. For that the Hon'ble Commissioner of Income Tax (Appeals), Guwahati-2 is not justified in upholding the view of the Ld. A.O. (DCIT Circle-3) that the loss suffered by the appellant

from share trading amounting to Rs.42,97,440/- was a bogus and fabricated loss and gone beyond his powers in ordering the Ld. AO to conduct enquires u/s 133(6) of the I.T. Act, 1961.

3. For that the Hon'ble Commissioner of Income Tax (Appeals), Guwahati-2 has gone beyond his power in directing the Ld. AO for reopening of cases for last preceding 6 (six) years plus subsequent 3 (three) years of the assessee.

4 For that the Demand issued u/s 156 be stayed till the disposal of appeal.

5 For that the appellant may kindly be permitted to add, alter or modify the grounds of appeal or any of the same at the time of hearing of appeal.”

3. Brief facts qua the issue are that assessee's case was selected for limited scrutiny. The purpose of limited scrutiny was to examine the mismatch of sales between audited accounts of the assessee and Income Tax Return filed by the assessee. Therefore, during the course of assessment proceedings, mismatch in sales turnover was one of the reasons for scrutiny and accordingly the assessee was asked to furnish the details of sales. In response, the assessee filed the details of sales and reconciliation of sales on the day of hearing on 10.11.2016 before the assessing officer. In support of the Sales/Turnover, the assessee also furnished bills of sales.

However, the assessing officer rejected the contention of the assessee and made addition on different ground holding that since the assessee had claimed to have traded on different scripts through the broker namely M/s. Shreyansh securities thereby resulting in having loss of Rs.42,97,440/- during the financial year under consideration, and the said transactions were not carried out electronically on screen-based systems, and the said transactions were done without settlement (non-delivery), therefore assessing officer treated the said loss as speculation loss under section 43(5) and hence made addition to the tune of Rs.42,97,440/-.

4. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id CIT(A) who has not condoned the delay in filing appeal before him and he has also held that loss of Rs. 42,97,440/-was a bogus and fabricated loss. Aggrieved by the order of Id CIT(A), the assessee is in appeal before us.

5.We heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. Before us, Id Counsel reiterated the submissions made before the Id CIT(A). On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

We note that eventhough the return of income of the assessee was picked up for limited scrutiny only to examine mismatch in sales as per audited books of accounts vis-à-vis the Income Tax Return, however, the Assessing Officer has erred in disallowing the loss of Rs.42,97,440/- as speculation loss which according to the Id Counsel is in violation of the CBDT Circular No.F. No. 225/402/2018/ITA.II, dated 28.11.2018, which is reproduced below:

***“F. No. 225/402/2018/ITA.II
Government of India
Ministry of Finance
Department of Revenue (CBDT)***

North Block, New Delhi, the 28th of November, 2018

To

All Principal Chief-Commissioners of Income-tax/All Principal Director-Generals of Income-tax

Sir/Madam,

Subject: Scope of enquiry in Limited Scrutiny cases selected under CASS cycles 2017 and 2018 in the context of information provided by any law-enforcement/ intelligence/regulatory authority or agency – regd.-

Under CASS cycles 2017 and 2018, some of the cases were selected for scrutiny as a ‘Limited Scrutiny’ case. In ‘Limited Scrutiny’ cases, Assessing Officer cannot travel beyond the issue(s) for which the case was selected. The idea behind such a stipulation is to enforce checks and balances upon powers of an Assessing Officer to do fishing and roving enquiries in cases under ‘Limited Scrutiny’.

2. In this regard, several representations have been received in the Board from the field authorities that in several cases under ‘Limited Scrutiny’, information pointing out specific tax-evasion for the

relevant year, given by any law-enforcement/intelligence/regulatory authority or agency is available with the concerned Assessing Officer, however, in view of the restrictive nature of enquiry/investigation which can be made in 'Limited Scrutiny' cases, the same presently cannot be acted upon.

3. The matter has been considered by the Board. In order to enable proper enquiry/ investigation in pending 'Limited Scrutiny' cases which were selected through CASS cycles of 2017 and 2018, where credible material or information has been/is provided by any law-enforcement/intelligence/regulatory authority or agency regarding tax-evasion by an assessee, it has been decided by the Board that issues arising from such information can also be examined during the course of conduct of assessment proceedings in such 'Limited Scrutiny' cases with prior administrative approval of the concerned Pr. CIT/CIT.

4. It is pertinent to mention that unlike CASS 2015 and 2016 cycles, where consideration of any additional issue lead to the conversion of case to '**Complete Scrutiny**' as laid down in **Instruction No. 5/2016 dated 14.07.16**, the pending 'Limited Scrutiny' cases of CASS 2017 and 2018 cycles would not be taken up for 'Complete Scrutiny' as the present directive is only to facilitate consideration of those issues wherein specific information of tax-evasion has been furnished by any law-enforcement/intelligence/regulatory authority or agency. Therefore, in such 'Limited Scrutiny' cases, Assessing Officer shall not expand the scope of enquiry/investigation beyond the issue(s) on which the case was flagged for 'Limited Scrutiny' & issue arising from nature of information mentioned in para 2 and 3, above.

5. The following procedure shall be adopted while examining the additional issue:

i. The Assessing Officer shall duly record the reasons for expanding the scope of 'Limited Scrutiny' to the extent mentioned in para 2 and 3, above;

ii. The same shall be placed before the Pr. CIT/CIT concerned and upon his approval, further issue can be considered during the assessment proceeding;

iii. The Assessing Officer shall issue an intimation to the assessee concerned that additional issue would also be considered during the course of pending assessment proceeding;

iv. To ensure proper monitoring in these cases, provisions of section 144A of the Income-tax Act, 1961 may be invoked in suitable cases. Further, to prevent fishing and roving enquiries in these cases, it is desirable that these cases are invariably picked up for Review/Inspection by the administrative authorities.

6. The above directive shall be applicable from the date of its issue and shall apply to the pending 'Limited Scrutiny' cases which were selected under the CASS 2017 and 2018 cycles. It is reiterated that the grounds mentioned in para 3 above are the only grounds on which a 'Limited Scrutiny' case of CASS 2017 and 2018 cycles can be expanded in its scope and that too only to the extent of the issues referred to by the law-enforcement/intelligence/regulatory authority or agency .

7. It may be brought to the notice of all for necessary compliance."

From the above circular of CBDT, it is abundantly clear that assessing officer would not take up the assessee's case for 'Complete Scrutiny' without duly recording the reasons for expanding the scope of 'Limited Scrutiny', which the assessing officer has

failed to do so. Besides, if the assessing officer wants to convert the assessee's case for 'Complete Scrutiny' then he has to place this proposal before the Pr. CIT/CIT concerned and upon his approval, further issue can be considered during the assessment proceeding; which the assessing officer has failed to do so, in the assessee's case, therefore, Id Counsel submits before us that assessment order passed by the assessing officer is bad in law.

6. The Id. Counsel has drew our attention to page no.47 of paper book which is a notice u/s 143(2) of the Act dated 31.08.2015 wherein it is clearly stated that the assessee's case has been selected for 'limited scrutiny' under the CASS. Therefore, we note that the assessee's case was selected for 'limited scrutiny' only and the assessing officer should not have expanded the scope of 'limited scrutiny' without recording reasons for doing so and without taking permission from the concerned Pr.CIT/CIT.

The Id. Counsel also drew our attention to the notice issued by assessing officer under section 142(1) dated 07.06.2016 which is placed at page no. 45 & 46 of the Paper Book wherein the assessee was directed to reconcile the sales turnover reported in the audit report vis-à-vis turnover in the Income Tax Return. We note that in order to make the compliance of the notice under section 142(1) dated 07.06.2016 (supra), the assessee appeared before the Assessing Officer along with the books of accounts and has reconciled the mismatch between turnover reported in the audit report vis-à-vis turnover in the Income Tax Return and the Assessing Officer has not taken any adverse view in respect of this issue for which the CASS has selected the return of income of the assessee for scrutiny u/s 143(3) of the Act. We note that the CBDT Circular issued u/s 119 of the Income Tax Act is binding on the Income Tax Authorities. The Assessing Officer's jurisdiction is limited to the issue identified by the CASS in case of 'Limited Scrutiny' cases. In the assessee's case under consideration the issue of mismatch of sales shown in the audit report vis-à-vis ITR was for 'Limited Scrutiny' but the assessing officer has expanded the scope of limited scrutiny without

taking permission from the concerned Pr.CIT/CIT, since there is no whisper of any sanction or approval of the Pr.CIT/CIT therefore action of Assessing Officer to assess the loss of Rs.42,97,440/- is beyond his jurisdiction and in violation of the CBDT circular which he was bound to obey. Therefore, we find merit in the assessee's grounds of appeal that the action of the Assessing Officer to make addition on account of loss of Rs.42,97,440/- is beyond jurisdiction and therefore null in the eyes of law and hence we delete the addition of Rs.42,97,440/-.

7.Next grounds of appeal of the assessee is against the directions given by the ld. CIT(A) to the assessing officer for considering reopening of cases for last preceding six years and subsequent years of the assessee. The ld. Counsel for the assessee for the assessee submits before the Bench that the CIT(A) could not have given such directions. According to him, section 251 of the Income Tax Act empowers the ld. CIT(A) that he may (i) confirm, (ii) reduce, (iii) enhance or (iv) annual the assessment. The CIT(A) does not have power to give directions to the assessing officer for reopening of cases for last preceding six years and subsequent years of the assessee. Therefore, according to ld Counsel it is illegal and beyond jurisdiction. It is a trite law that the CIT(A) who is the first appellate authority can do what the Assessing Officer can do. The first appellate proceedings is an extension of the assessment proceedings. So, it means that what the Assessing Officer cannot do, the CIT(A) cannot do. As per the scheme of the Act when an assessee files a return of income the Assessing Officer accepts the return of income u/s 143(1) of the Act or scrutinize the assessment and pass the order u/s 143(3) of the Act and if the time limit to issue the notice 143(2) has lapsed then assessing officer cannot frame the assessment u/s 143(3) of the Act. The assessing officer can do the assessment for the year for which assessee filed the return of income. The assessing officer can not frame the assessment for preceding years and subsequent years. Hence, the ld. CIT(A) could not have given directions to the Assessing Officer for which the Assessing Officer was not empowered to do, as

discussed above and for that we rely on the judgment of the hon'ble Bombay High Court in the case of B. Mohta 56 ITR 269(Bom).

Based on the facts narrated above we are of the view that the directions given by the ld. CIT(A) is beyond his jurisdiction and therefore we cancel the same.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Court on 16.09.2020

Sd/-
(A.T. VARKEY)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

दिनांक/ Date: 16/09/2020

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Copy of the order forwarded to:

1. JDB Finance
2. DCIT, Circle-3, Guwahati
3. C.I.T(A)-
4. C.I.T.- Guwahati.
5. CIT(DR), Gauhati Bench, Guwahati.
6. Guard File.

True copy

By Order

Senior Private Secretary / DDO/ H.O.O
ITAT, Gauhati Bench