

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.

BEFORE SH. LALIET KUMAR, JUDICIAL MEMBER
AND DR. M. L. MEENA, ACCOUNTANT MEMBER

I.T.A. No. 114/Asr/2020
Assessment Year: 2015-16

Naveen Bajaj Jal, H.No. 145, Street No.11, Sangat Singh Nagar, Jalandhar. [PAN: ACCPB1343H] (Appellant)	Vs.	Pr. CIT -1, Jalandhar. (Respondent)
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Appellant by	Sh. Ashray Sarna, CA.
Respondent by	Sh. Sanjay Dhariwal, CIT.DR

Date of Hearing	17.09.2021
Date of Pronouncement	14.10.2021

ORDER

Per, Dr. M. L. Meena, AM:

The captioned appeal of the assessee is directed against the order of the Pr. CIT-1, Jalandhar, dated 20.02.2020. The assessee has raised the following grounds of appeal:

“1. That the order passed by the Hon’ble Pr. CIT dated 20.02.2020 is against the law and facts of the case.

2. That having regard to the facts and circumstances of the case, Hon’ble Pr. CIT has erred in law and on facts in framing the impugned assessment order u/s 263 and without complying with the mandatory conditions u/s 263 as envisaged under the Income Tax Act, 1961.

3. That having regard to the facts and circumstances of the case, Hon’ble Pr. CIT has wrongly assumed jurisdiction under section 263 of the Act to set-aside the assessment order dated 07.11.2017 passed by the Assessing Officer in as much as the order is neither erroneous nor prejudicial to the interest of Revenue and as such the assumption of jurisdiction under section 263 of the Act is beyond his jurisdiction.

4. That having regard to the facts and circumstances of the case, Hon’ble Pr. CIT has erred in law and on facts in making addition of Rs.55,31,787/- by ignoring the facts of the case and without observing the principles of natural justice.

5. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

2. At the outset, the Id. Counsel for the assessee requested for condonation of delay of 60 days, contending that because of covid -19, it

was not possible for the appellant assessee to file appeal within prescribed time. It was stated before us that it could be feasible to file the present appeal on 18.05.2020, when there was some relief allowed in Curfew by Govt. of Punjab. In our view, there was genuine reason caused delay filing the appeal on account of pandemic Covid -19, which constitute sufficient cause beyond the control of the assessee for such delay of 60 days in filing appeal. Accordingly, we condoned the delay and heard the appeal on merits.

3. Briefly, facts of the case are that the case was selected under limited scrutiny with issues identified for examination are that 1) Contract Receipt/Fees mismatch. 2) Sales Turnover Mismatch and 3) Tax Credit Mismatch. The statutory notice dated 19.09.2016, issued under section 143(2) (copy placed on record). The Assessing Officer (in short "The AO") while working within the domain of limited scrutiny, as per the binding CBDT instruction No.5/2016 dated 14.07.2016 governing limited scrutiny, confined himself to examine the issues as identified above, and therefore, required the assessee to part with the relevant information, explaining the tree point inclusive of mismatch as above. The AO, being fully satisfied, after examining the information/material made available during assessment proceedings, that there was no discrepancy or mismatch under any of the

heads identified as above, the assessment order under question was accordingly passed, accepting the income as returned.

4. The Ld. PCIT, in the order u/s 263 has observed vide para 5 to 8 from the impugned order as under:

5. I have carefully considered the submission filed by the assessee in response to notice u/s 263 as well as the submissions filed during the course of assessment. As regard the assessee's objection on the maintainability of the notice u/s 263, it would be suffice to say that the presumptions of the assessee are not based upon any empirical observations. The view taken by the undersigned is based upon an independent perception of the assessment record.

6. The other objection, 'with regard to the difference of opinion between the Assessing Officer and the Commissioner of Income Tax, the position of law stands substantially altered with the insertion of Explanation'2 in" section 263, by the Finance Act, 2015. As the deeming provision in that section has been specifically invoked, the decision relied upon by the assessee, pertaining to the pre-amended provisions of section 263, would no longer hold good.

7. The third objection in respect of the issue not being covered as it's a case of limited scrutiny, It has been observed that the case of the assessee was selected under CASS Limited Scrutiny on the issue of "Receipt u/s 194C and 194J (as per 2.6AS) are more than the receipts shown in ITR 4/5/5, Tax credit claimed in ITR is less then tax credit available in 26AS and Mismatch in sales turnover reported in Audit report and ITR". However, as per the directions contained in the C8DT, New Delhi instruction No.20/2015 dated 29.12.2015

regarding Scrutiny cases selected through CASS and conversion of Limited Scrutiny cases into complete scrutiny cases para 3 (d) which is reproduced as under and the partial modification in the Instructions vide No.5/2016 dated 14.07.2016, the case was liable to be converted into Complete Scrutiny as per laid down procedures and the AO should have sought approval from the Pr.CIT in writing to convert the case from Limited Scrutiny to complete scrutiny.

3d. 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.

8. It is quite evident that since there was a potential escapement of income in this case which exceeds the prescribed limit, the AO should have moved proposal to convert the case into complete scrutiny as per the above Instructions dated 29.12.2015 and 14.07.2016, as above and a complete verification should have been conducted in the case on the above discussed issue.

5. The order u/s 263 was passed setting aside assessment order dated 07.11.2017 to the file of the assessing officer holding the assessment order passed by the AO, was erroneous in so far as prejudicial to the interest of revenue.
6. The assessee being aggrieved by the order passed by the PCIT, is in appeal before us on the ground mentioned hereinabove.
7. The Id. AR submitted that there being a no case of complete scrutiny, the Ld.AO worked within the guidelines of CBDT instruction supra, and committed no error in accepting the income as returned, after examination and verification of the points, identified for limited scrutiny. The claim of the medicine expenses, which is now being seen with incongruity, was never being the subject matter of limited scrutiny and therefore, no failure can be attributed to the Assessing Officer, for not having travelled beyond the issues of limited scrutiny, to examine the allowability of the said expenses. Had it been a matter of complete scrutiny, in that event, there could be a probability to take recourse to the action, now proposed. He further submitted that in view of these fact and circumstances, since there was no failure on the part of the AO, by not jumping into examining the claim of medicine expenses, the separate issue of the PCIT's Choice and not of the issues on which case was selected for limited scrutiny. The point of three points of limited srutiny having been fully examined, the

assessment order dated 07.11.2017 is neither erroneous nor prejudicial to the interest of revenue as may be set aside under section 263.

8. The Ld.AR further submitted that the order of the assessing officer cannot be said to prejudicial and erroneous to the interest of the revenue as it was not necessary for the assessing officer to examine the issue beyond the scope of limited scrutiny for which the matter was selected. In support, he has drawn our attention to the following decisions:

I. Su-Raj Diamond Dealers Pvt. Ltd. vs. Pr CIT reported at 203

TTJ 137 (ITAT Mumbai): *It was held the assessing officer having confined himself to the issues for which the case of the assessee was selected for limited scrutiny, therefore, no infirmity can be attributed to his order, for the reason, that he had failed to dwell upon certain other issues which did not form part of the reasons for which the case was selected for limited scrutiny under CASS. The order u/s 263 was consequently quashed.*

II. Sonali Hemant Bhavsar vs. Pr. CIT (ITAT Mumbai): *It was*

held that a limited scrutiny case cannot be expanded unless the AO converted into complete scrutiny with the approval of the Pr. CIT and if the AO after considering the submissions of the

assessee does not come to the conclusion of potential escapement the Ld. Pr. Cannot hold the order to be erroneous on the ground that AO ought to have reached to such conclusion. The order u/s 263 was accordingly quashed.

III. Storewell Construction & Engineers vs. Pr. CIT [ITAT

Pune]: *In this case the revisionary jurisdiction had been invoked by the Pr. CIT to look into the issues which were not within the purview of limited scrutiny. In view of the circular issued by CBDT and judicial decisions, the order u/s 263 was quashed.*

IV. Akash Ganga Promoters & Developers vs. Pr. CIT [ITAT

Cuttack]: *It was held that where the case was selected for scrutiny for limited scrutiny and there was no allegation by the Id. Pr. CIT that the AO has not made inquiry on any of the issues for which the case was selected for limited scrutiny, the assessment cannot be held to be erroneous and prejudicial to the interest of revenue.*

9. In view of the above contention, it was submitted that the order passed by the PCIT, is Void and is required to be quashed.

10. Per contra, Ld. CIT(DR) for the revenue had vehemently relied upon the order passed by the assessing officer as well as by the CIT (A).

11. We have considered the rival contention of both the parties and perused the material available on record, including the judgments cited at bar during the hearing. The Ld.AR had focussed his submission on the first ground alone, and contended that if the first ground is decided in favour of the assessee then other grounds would be academic in view of the order of PCIT may be quashed. However, in case the bench comes to the conclusion that the matter is required to be heard, then the written submissions reproduced hereinabove can be considered for the purpose of deciding the issues on merit.

12. Recently, the coordinate bench, Amritsar in the case of Paradise Rubber Industries in ITA no. I.T.A No. 115/ASR/2020, ASSESSMENT YEAR: 2015-16 on similar facts held that revisionary jurisdiction shall not be invoked by the Pr. CIT to look into the issues which were not within the purview of limited scrutiny by observing vide para20 and 21 as under:

“20. In the light of the above, we have considered ground No. 1. Admittedly the present case before us is a case of Limited scrutiny selected for particular points reproduced hereinabove confined to 4 issues. The issue for which the PCIT issued the show cause notice

was entirely different than the four issues examined under limited scrutiny by the assessing officer. The Board in its circular mentioned the procedure for converting the limited scrutiny case into full-fledged scrutiny. The said circular was reproduced by the PCIT in the impugned order before us. From the perusal of the above said circular, it is abundantly clear that the conditions, which are sine qua non were non-existence. Therefore, the assessing officer did not have to convert or make a request for a limited scrutiny case to full-fledged scrutiny.

21. *Since the assessing officer was only required to decide the issues specifically selected under Limited scrutiny and was not required to examine or sufficiently enquire the matters which are not referred to him as alleged by the PCIT. Once the assessing officer was required to apply his mind to the specific issues, which were duly dealt by the assessing officer in the order passed by him, it cannot be said that the order passed by the assessing officer was erroneous or prejudicial to the interest of the revenue. The revenue in its wisdom has directed the assessing Officer to decide the specific issues and laid down the condition of deviation from the specific issues after fulfilling the requirement of the circular issued by the Board in this*

regard. Once the AO had scrupulously discharged the duty assigned to him, it cannot be said by PCIT that the order passed by the assessing officer was erroneous and prejudicial to the interests of the revenue. In light of the above, we fully agree with the submission made by the assessee before us. We respectfully rely upon the decision referred hereinabove by the AR of the assessee and did not find the judgments referred by the Ld. PCIT in order in support of order are applicable.”

13. In the above view and following our decision in the case of Paradise Rubber Industries (Supra), the appeal filed by the assessee is allowed on legal ground. We have not discussed any other grounds referred by the Ld.AR in the written submission on merits.

14. As a result, the appeal of the assessee is allowed.

Order pronounced in the open court on 14.10.2021

Sd/-

(Laliet Kumar)
Judicial Member
*Doc**

Sd/-

(Dr. M. L. Meena)
Accountant Member

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order