

(2024) 06 ITAT CK 0005

Income Tax Appellate Tribunal (Delhi E Bench)

Case No: Income Tax Appeal No. 2768/DEL/2023

Nisha Goel

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision: June 4, 2024

Acts Referred:

- Income Tax Act, 1961 - Section 142(1), 143(2), 143(3)

Hon'ble Judges: Shamim Yahya, (AM); Challa Nagendra Prasad, J

Bench: Division Bench

Advocate: Suresh Kumar Gupta, Amit Katoch

Final Decision: Partly Allowed

Judgement

1. This appeal is filed by the Assessee against the order of the Ld.CIT(Appeals)-NFAC, Delhi dated 18.09.2023 for the AY 2014-15 arising out of the assessment order passed u/s 143(3) of the Act.

2. Ld. Counsel for the assessee, at the outset, submits that ground no.1 of grounds of appeal filed by the assessee is an additional ground challenging the very validity of the assessment order and the jurisdiction of the Assessing Officer in completing the assessment without complying with the mandatory CBDT Instructions/Guidelines in relation to cases selected under limited scrutiny. Ld. Counsel submits that this ground is a legal ground going to the root of the matter i.e. the very validity of assessment and, therefore, the additional ground may be admitted for adjudication.

3. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of National Thermal Power Corporation Limited Vs. CIT (229 ITR 383) and Jute Corporation of India Limited Vs. CIT (187 ITR 688).

4. On the other hand, the Ld. DR opposed for admission of additional ground. On perusal of the grounds of appeal raised by the assessee, it is noticed that the assessee has challenged the impugned assessment as invalid as the said assessment was completed without complying with the mandatory CBDT Instructions/Guidelines in relation to cases selected under limited scrutiny. Ground which was raised challenging the very validity of the assessment the same is admitted placing reliance on the decision of the Hon'ble Supreme Court in the case of National Thermal Power Company Limited Vs. CIT (supra).

5. Ld. Counsel for the assessee referring to assessment order submits that assessment has been completed on the basis of selection of the case under CASS for limited scrutiny with the reason "sale consideration of property is less than the sale consideration of property reported in AIR". Ld. Counsel for the assessee referring to page 4 of the Paper Book submits that this fact stands supported by the screenshot of reasons for scrutiny downloaded from the IT portal which shows that the assessment was selected for limited scrutiny. Ld. Counsel for the assessee submits that as per para 3 of CBDT Instruction notice u/s 143(2) of the Act is required to be issued to the tax payer with remarks "selected under computer added scrutiny". Ld. Counsel further submits that in the CBDT Instruction it is also mentioned that the first questionnaire issued u/s 142(1) of the Act thereafter should confine the enquiry of verification only on the specific facts requiring examination/verification under limited scrutiny. The Ld. Counsel for the assessee referring to page 3 of Paper Book and page 56 of Paper Book the notices issued u/s 143(2) of the Act dated 01.09.2015 and 24.09.2015 submits that the assessee has never been intimated of the fact that the assessment is initiated for limited scrutiny for verification of a particular issue.

6. Ld. Counsel further submits that in the first notice dated 18.07.2017 issued under 142(1) of the Act which is placed at Paper Book page 5. The Assessing Officer has treated the scope of enquiry as if case was a complete scrutiny and had not mentioned the reason for selection of the case under limited scrutiny. This is yet another non-compliance of the Instruction by the Department in its Circular No.7/2014 dated 26.09.2014. Ld. Counsel also submits that no enquiry was raised on the issue for the verification for which the case was selected for limited scrutiny.

7. Ld. Counsel further submits that for the first time on 08.12.2016 the AO apprised the Counsel of the assessee about the reason for limited scrutiny and for the first time query on the limited issue was raised. Therefore, it is a case of violation of CBDT Instruction which required the AO to communicate the limited scrutiny reason in the first communication after issue of notice u/s 143(2) of the Act.

8. Ld. Counsel for the assessee further submits that there is another violation of CBDT Instruction in para 2 which required the scope of enquiry in the case of limited scrutiny

needed be confined to verification of the particular aspects of the matter of limited scrutiny. The instruction clearly and strictly places complete embargo on the enquiry on the other issues not related to the reason for limited scrutiny assessment which is evident from the specific direction which reads as under:

"Therefore, in such cases, the assessing officer shall continue the questionnaire and subsequent enquiry or verification only to specific points on the basis of which particular return selected for scrutiny."

8.1 Contrary to categorical instructions to the above effect, the Ld AO as is evident from the first notice u/s 142(1) (PB 5), the Ld AO has conducted various enquiry in S.No. 1 to 3 and none of which were related to the issue under limited scrutiny.

8.2 Ld. Counsel submits that in fact AO made reduction of cost of construction/improvement without enlarging the scope of enquiry without complying with the CBDT Instruction. The Ld AO has recomputed the capital gain by taking the stamp duty valuation as the sale consideration which is the action undisputedly as per the reason for selection but the Ld. AO had also disturbed the cost of construction/improvement from Rs.2,20,57,920/- to Rs.65,32,500/-. The later action of the Assessing Officer was not covered by the reason for limited scrutiny selection as the reason in question was for understatement of sale consideration. The reason is clearly defined in its scope and cannot be extended to verification of cost of construction unless the case is converted into complete scrutiny and hence, the reduction in cost of construction/improvement is outside the scope of power under limited scrutiny.

8.3 Ld. Counsel submitted that from assessment order it is evident that the Ld AO has initiated enquiry on issues other than limited scrutiny issues prior to approval by the Pr CIT in complete defiance of above binding CBDT instructions. It is submitted that the Kolkata Bench of ITAT in ITA No.2611/Kol/2019 in the case of Sukhdham Infrastructure LLP vs ITO dated 23.02.2023 held the adoption of such procedure in complete derogation to the instruction of CBDT. Following the decision of Delhi Bench in the case of Dev Milk Foods p Ltd vs Addl. CIT ITA No.6767/Del/2019 dated 12.06.2020 allowed the appeal of the assessee. The above decision of the Kolkata Tribunal has been approved by the Hon'ble High Court of Calcutta in Pr CIT vs Sukhdham Infrastructure LLP IA No. GA/1/2023 dated 14.08.2023. In view of above, it is submitted that the assessment order passed u/s 143(3) was invalid and such invalid order could not be subjected to revision by the Ld Pr CIT.

8.4 Ld. Counsel further submitted that the co-ordinate Bench in the case of CBS International Projects Ltd vs ACIT ITA No. 144/Del/2019 dt: 28.02.2019 in para 10 held that the instructions of the CBDT permits the AO to widen the scope of enquiry for limited scrutiny cases but condition precedent for such action is that prior approval of

higher authorities. When perusal of assessment order does not find mention of any permission taken from Pr CIT/DIT for further enquiries in the case, the assessment order so framed was not found in consonance with CBDT instructions and therefore, the order was quashed without dwelling into merits of the case.

9. Ld. DR strongly placed reliance on the orders of the Assessing Officer.

10. Heard rival submissions. There is considerable force in the submissions of the Ld. Counsel for the assessee. It is not in dispute that the case of the assessee was selected for limited scrutiny as is evident from the assessment order as well as the screenshot placed by the assessee at page 4 of the Paper Book. The screenshot of the IT portal suggest that the assessment was taken up for limited scrutiny and the reason for scrutiny selection is stated to be "sale consideration of the property in ITR is less than sale consideration of property reported in an AIR". Perusal of the notices dated 19.01.2015 and 24.09.2015 issued u/s 143(2) of the Act which is placed at pages 3 & 56 of the Paper Book respectively suggest that the AO has not intimated the scope of scrutiny in both these notices. It is also observed from the notice issued u/s 142(1) of the Act dated 18.07.2016 the AO required the assessee to furnish the following details/documents: -

"1. Detailed note giving the nature of business activities, and its modus operandi carried out during the year. Whether nature of business activities are identical to the earlier year or there is any change.

2. Details of all bank accounts maintained by you either personal or for business purpose alongwith narration of Debit/Credit amounts of Rs.1,00,000/- and above. Documentary evidence of credits not forming part of total income may be submitted. Also file copy(s) of Saving Bank Account(s) with narration of all Debit Credit entries The details should include nature of account, account no., name and address of bank.

3 Please furnish copy of computation of income and statement of affairs with all annexures/schedules for the AY 2013-14 & 2014-15."

11. The above suggests that the AO issued notice u/s 142(1) of the Act for verifying various details and documents, bank statement, nature of business activities, details of bank whether used for business purposes or for personal purposes to explain the credits and debits in the bank account where amount succeeding Rs.1 lakh. All these goes to show that the AO exceeded the scope of enquiry what was mentioned in the limited scrutiny reasons. The AO also did not mention whether he has taken any approval to exceed the enquiries other than the one specified in limited scrutiny. Perusal of the assessment order shows that the AO recomputed the entire capital gains by reducing the cost of construction of improvement which is not covered under

reason for limited scrutiny selection. As the limited scrutiny reason was only to verify the understatement of sale consideration.

12. In the case of PCIT Vs. Sukhdam Infrastructures LLP the Hon'ble Kolkata High Court in ITA No.164 of 2023 dated 14.08.2023 held as under:

"The short question involved in this appeal is whether the Assessing Officer, which had initially issued notice under section 143(2) of the Act for Limited Scrutiny of the return filed by the assessee on three aspects, could have expanded the scope prior to obtaining approval for a Complete Scrutiny by the appropriate authority.

It is an admitted fact that on 26 July, 2016 an order for Limited Scrutiny came to be passed. Subsequently, the Assessing Officer expanded the scope on 20th February, 2017 and commenced certain enquiries. The order granting approval for Complete Scrutiny was passed only on 14th December, 2017, that is, much after the enquiry was commenced by the Assessing Officer on 20 February, 2017. The correctness of the same was tested by the assessee by filing an appeal before the Commissioner of Income Tax (Appeals) (CIT(A)). The CIT(A) though noted the said issue did not render a specific finding but went into the merits of the matter and granted relief to the assessee to the extent indicated in the said order. The assessee as well as the revenue carried the matter on appeal to the Tribunal. The learned Tribunal examined the jurisdictional issue alone and noted that the Assessing Officer had issued notice under Section 143(2), dated 28th July, 2016, for a Limited Scrutiny covering four issues namely, interest expenses, income from real estate business, sale turnover mismatch and other expenses claimed in the profit and loss account. Subsequently, by notice dated 20 February, 2017, issues under Section 142(1) of the Act, the Assessing Officer called for information on secured and unsecured loan deposits and this was admittedly prior to the Limited Scrutiny being converted into a Complete Scrutiny by order dated 14 December, 2017. The learned Tribunal while holding that such action of the Assessing Officer was impermissible referred to the Circular issued by the Circular issued by the CBDT in Instruction no.5 of 2016, dated 14.7.2016. In the said Circular/Instruction, it was clarified by the CBDT that in cases under Limited Scrutiny the scrutiny assessment proceedings would initially be confined only to issues under Limited Scrutiny and questionnaires, enquiry, investigation etc. would be restricted to such issues. Further, it has been stipulated that only upon conversion of case to a Complete Scrutiny after following the procedure as outlined in the CBDT Instruction, the Assessing Officer may examine the additional issues besides the issue(s) involved in Limited Scrutiny. The learned Tribunal found that the procedure adopted by the Assessing Officer was in complete derogation to the Instruction issued by the CBDT. The learned Tribunal also took note of a decision

of the co-ordinate Bench of the Delhi Tribunal in the case of Dev Milk Foods Pvt. Ltd. vs. Addl. CIT in ITA No. 6767/Del/2019, dated 12.06.2020, for the assessment year 2015-16. In the said decision, the learned Tribunal had taken note of the CBDT Instruction No.5 of 2016 and held that the procedure adopted by the Assessing Officer was unsustainable. The learned Tribunal in the case on hand after taking note of the decision in Dev Milk Foods Pvt. Ltd. held that the CBDT has clarified that in Limited Scrutiny, the scrutiny assessment proceedings would initially be confined only to the issues and questionnaires, enquiry and investigation would be restricted to such issue under the Limited Scrutiny. Thus, the learned Tribunal dismissed the appeal filed by the assessee."

13. In the case of CBS International Projects Pvt. Ltd. Vs. ACIT in ITA No.144/Del/2019 dated 28.02.2019 the coordinate bench of Delhi held as under:

"A perusal of the aforesaid instruction shows that the Assessing Officer can widen the scope of scrutiny even if it is selected for scrutiny assessment under CASS. However, the condition precedent for such action of the Assessing Officer is that he has to seek prior approval of the higher authorities. A perusal of the assessment order shows that the Assessing Officer has not mentioned as to when the permission from the PCIT was sought to make further enquiries in the case of the assessee. Considering the facts of the case in totality, in the light of the CBDT Instructions mentioned hereinabove, qua notice u/s 143(2) of the Act, we are of the considered opinion that the assessment order so framed by the Assessing Officer is not in consonance with Instruction of the CBDT and, therefore deserves to be quashed. The order of the Id. CIT(A) is accordingly set aside."

14. The AO has expanded the limited scrutiny by tinkering with cost of construction/improvement and total recasting the capital gains shown by the assessee. There is nothing on record to suggest that the AO obtained any permission to convert limited scrutiny into complete scrutiny. Therefore, the action of the AO is clearly in violation of the CBDT Instructions. Thus, the assessment order passed u/s 143(3) of the Act dated 30.12.2016 for the AY 2014-15 is in violation of the CBDT Instructions and, therefore, the same is quashed. Additional ground raised by the assessee is allowed.

15. Since the assessment is quashed on legal ground the other grounds raised by the assessee on merits are not gone into as the same would result in only academic exercise at this stage.

16. In the result, appeal of the assessee is partly allowed as indicated above.