

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR "SMC" BENCH: AMRITSAR**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.67/Asr/2019

[Assessment Year : 2015-16]

Smt. Sanjeet Kanwar, C/o-B.D.Bansal & Co., B-641, Ranjit Avenue, Near A-Block Gurudwara, Amritsar-143001. PAN-AKJPK2797B	vs	ITO, Ward-4, Hoshiarpur.
APPELLANT		
RESPONDENT		
Appellant by	Shri Tarun Bansal, Adv.	
Respondent by	Shri Manpreet Singh Duggal, Sr.DR	
Date of Hearing	16.06.2022	
Date of Pronouncement	30.06.2022	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2015-16 is directed against the order of Ld. CIT(A)-1, Jalandhar dated 22.11.2018.

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

1. *"That selection of appellant's case under limited scrutiny is void-ab-initio being rule 114-E read with Form No.61A for scrutiny cases, applicable for cash deposit more than Rs. 10,00,000/- in saving A/c and not to cash deposit of more than Rs. 10,00,000/- in cash-credit/current account.*
2. *That ld. CIT(A) wrongly ignored, that the ld. A.O opened the case under limited scrutiny for "Non-corporate assessee having business income to whom section 44 AB does not apply and cash deposit in saving Bank account is more than turnover in Bank account of BBN motors"(As per ITS details) and later on left current account mentioned supra and made addition of Rs.8.57 Lacs from the other*

current account No.5005-3185-861 of appellant, by suo-motto widening the scope of limited scrutiny, which is ultra-vires to the CBDT circular and order was void-ab-initio.

3. *That Id. CIT(A) wrongly ignored that, the Id. A.O overlooked the CBDT instruction No-20/15 dated 29-12-15, while issuing the first notice u/s. 143(2) dated 1-08-16 and notice is bad in law, as-well-as, Ultra-vires to the board circular being not mentioning scope of enquiry and reason for selection.*
4. *That no permission of Pr. CIT was accorded by A.O before widening the scope of limited scrutiny and order of A.O is void-ab-initio.*
5. *That the Id. CIT(A) has wrongly ignored that the A.O has not given telescopic benefit of total cash deposit of Rs.8,57,000/- vs. total cash withdrawn of Rs.7,57,959 during the year from the same current A/c No. 5005-3185-861 of the appellant, before confirming addition of Rs.8,57,000/."*

3. During the course of hearing, the assessee has also raised an additional ground that reads as under:-

1. *"That the Ld. A.O. accepted sale proceeds as offered, as well as, the returned income of the appellant and then again cannot be permitted to make the addition u/s 69, of said sale proceeds etc. as unexplained investments being cash deposited in the bank out of cash sales, which amounts to double addition, once as sales and secondly as unexplained investments."*

FACTS OF THE CASE:-

4. Facts giving rise to the present appeal are that in this case, the return of income was filed through e-mode on 03.12.2015 vide acknowledgement No.898867150031215, declaring total income at Rs.2,69,600/-. Subsequently, the case was selected for limited scrutiny under CASS for cash deposit in bank accounts being more than the turnover. A notice u/s 143(2) of the Income Tax

Act, 1961 ("the Act") was issued and duly served upon the assessee. In response thereto, the assessee and her husband appeared before the AO and filed the details. The AO thereafter, proceeded to frame the assessment u/s 143(3) of the Act. Thereby, he made addition of Rs.8,57,000/- being the cash deposited in the bank account of the assessee.

5. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions and perusing the material available on record, dismissed the appeal of the assessee and sustained the impugned addition.

6. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

7. Apropos to Grounds of appeal, Ld. Counsel for the assessee reiterated the submissions as made in the written submissions. For the sake of clarity, the submissions of the assessee are reproduced as under;-

Ground No. 2, 3 and 4

Ground No. 2

That ld. CIT(A) wrongly ignored, that the ld. A.O opened the case under limited scrutiny for "Non-corporate assessee having business income to whom section 44AB does not apply and cash deposit in saving bank account is more than turnover in Bank account of BBN motors" (As per ITS details) and later on left current account mentioned supra and made addition of Rs. 8.57 Lacs from the other current account no. 5005-3185-861 of appellant, by suo-motto widening the scope of limited scrutiny, which is ultra-vires to the CBDT circular and order was void-ab-initio.

Ground No. 3

That Id. CIT(A) wrongly ignored that, the Id. A O overlooked the CBDT instruction no. 20/15 dated 29-12-15, while issuing the notice u/s 142(1) dated 22-12-17 and notice is bad-in-law, as well as, Ultra-vires to the board circular being not mentioning scope of enquiry and reason for selection.

Ground No. 4

That no permission of Pr. CIT was accorded by A.O before widening the scope of limited scrutiny and order of A.O is void-ab-initio.

Arguments :

- 1) *That assessee filed the return for A.Y 2015-16 declaring a total income of Rs. 269600, as per Para-1 of A.O's order. The break-up of the income is as under, as per Para 6.1 of CIT(A)'s order :-*

	<i>Amount in Rs.</i>
<i>Income from Salary</i>	<i>= 326826</i>
<i>Income from Business u/s 44AD</i>	<i>= 66531</i>
<i>Income from other Sources</i>	<i>= 89924</i>
<i>Gross Total Income</i>	<i>= 402281</i>
<i>Less: Deduction u/s 80C, as per</i>	<i>= 132683</i>
<i>Acknowledgement enclosed at page 23</i>	
<i>Balance</i>	<i>= <u>269598</u></i>

- 2) *The turnover shown by the assessee = Rs. 831625 u/s 44AD as per Para 2.6 of A.O's order and Para 6.1 of CIT(A)'s order and Net Profit is shown @ 8%, as per CIT(A)'s order, Para 6.1 = Rs. 66,531/-.*
- 3) *That the case of the appellant was selected for limited scrutiny under CASS with the following reasons as per Para 1 of A.O's order :-*
- "Cash deposited in bank a/c is more than the turnover."***
- 4) *Copy of detail mentioned in ITS indicating the type of scrutiny as limited is enclosed at page 24 and copy of ITS (of CIB) transactions are enclosed at page 25 to 36.*

As per ITS details, as mentioned supra, indicate that all the deposits were made in the A/c no. 50050119561 in the Kangra Centre Co-operative Bank, which is on the name of BBN Motors. Party's name (as per AIS) is Sanjeet Kanwar, as well as, her PAN was also mentioned.

- 5) *That the Id. A.O issued notice u/s 143(2) dtd. 01-08-2016 and appellant replied that a/c no. 50050119561 does not pertain to her, as per Para-2 of A.O's order.*

Later on in further enquiry, the Id. A.O mentioned in Para-1, internal page-2 of A.O's order that appellant namely - Smt. Sanjeet Kanwar is only the guarantor in the said account.

- 6) *On 27-10-17, the Id. A.O issued another notice u/s 142(1) for 06-11-17 (as per Para 2.1 of A.O's order) and further adjourned to 13-11-17 (as per Para 2.1 of A.O's order)*

That the appellant filed a reply dtd. 13-11-17 as per Para 2.2 of A.O's order and attached the copy of A/c no. 50053185861 of Kangra Centre Co-operative Bank Ltd., now enclosed at page 19 to 22- indicating that this said a/c is her business current a/c only.

- 7) *That after getting the bank statement of A/c 50053185861 started enquiring about the said a/c and Id. AO issued another notice u/s 142(1) dtd. 12-12-17 for 28-12-17, indicating that you are a proprietor of BBN Nath Auto Consultants and directed to explain the source of cash deposit made in the said bank current a/c, refer internal page-3, Para-2 of A.O's order.*

- 8) *Now here the legal issue arised :*

because the Id. A.O after noticing that the bank a/c no. 50050119561 does not belong to the appellant and is on the name of BBN Auto Consultants (which belongs to her husband Sh. Brajesh Kanwar) stopped the limited scrutiny as mentioned supra and converted the limited scrutiny into complete scrutiny suo- motto and further forgot to follow CBDT circular no. 20/2015 dtd. 29-12-15, copy enclosed at page 37-38 indicating that the permission of PCIT is must to convert the limited scrutiny into complete scrutiny as per

Para-3(d) of circular. Copy of Circular dtd. 26-09-14 vide no. 7/2014 indicates in Para-3 that the reasons for selection of cases are displayed to A.O in AST application, copy enclosed at page 39 to 40. The CBDT cleared their intentions at Para 3, vide circular dtd. 30-11-17, copy enclosed at page 43 to 44 mentioning why the approval is needed to converting the limited scrutiny into complete scrutiny. Because the order-sheet was made perfunctorily by AO and this give rise to strong suspicion to a malafide intentions and officer concern has placed under suspension. In this case order-sheet was maintained in very perfunctorily manner and no reasons were mentioned for converting to limited scrutiny to complete scrutiny suo-moto and not mentioned at all of this conversion and further this complete scrutiny was without the approval of PCIT. Copy of order-sheet enclosed at page to 45 to 48 .

- 9) *The Circular dtd. 14-07-16 bearing no. 5 enclosed at page 41 to 42 clearly indicates at Para-4 that after converting the case into complete scrutiny, the A.O may examine the additional issues besides the issues involved in limited scrutiny.*

Hence, the conversion of limited scrutiny into complete scrutiny without approval is bad-in-law and order is void-ab-initio.

The matter is covered by the following case law of jurisdictional bench :-

Gurpreet Kaur vs. ITO (ITAT, Asr)

60 IT Rep 393 (2016)

ITA No. 87/16

Copy enclosed at page 50 to 63 (Refer para -29)

- 10) *That the notice issued u/s 142(1) dtd. 22-12-17, as per Para-2.3 of A.O's order is bad-in-law, as ultra-virus to the Board circular being not mentioning the widening of scope of enquiry from limited to complete and reason for selection and overlooking the board circular dtd. 29-12-15, enclosed at page 37 to 38.*

- 11) ***That if your Honour is not satisfied with the legal issue then the case on merits is as under as per additional/legal ground and ground no. 5 :-***

Additional/Legal Ground :-

That the Id. A.O accepted sale proceeds as offered, as well as, the returned income of the appellant and then again cannot be permitted to make the addition u/s 69, of said sale proceeds etc. as unexplained investments being cash deposited in the bank out of cash sales, which amounts to double addition, once as sales and secondly as unexplained investments.

Ground No. 5

That the Ld. CIT(A) has wrongly that the A.O has not given telescopic benefit of total cash deposit of Rs. 8,57,000/-vs. total cash withdrawn of Rs. 7,57,959 during the year from the same current A/c No. 5005-3185-861 of the appellant, before confirming addition of Rs. 8,57,000/-.

ARGUMENTS:

- 1) *That the cash sales during the year was rs.831625/- and profit shown u/s 44AD was Rs.66531/-, copy of drafted Profit & Loss A/c from figures mentioned by A.O in his order u/s 44AD is enclosed at page 7. The copy of drafted sales a/c and purchases a/c during the year was Rs.831625/- , as drawn from bank account, as well as, inferred from A.O's order is enclosed at page 8 to 9. All the cash sales and purchases were first accounted in business cash A/c by the appellant and out of which the cash was deposited in the bank. The copy of business cash a/c as emerges from the bank statement, as drafted now, is enclosed at page 10 to 12. Bank statement of A/c no. 50053185861 is enclosed at page 19 to 22 and Bank ledger a/c drafted from the bank statement is enclosed at page 13 to 14. The appellant has taken opening balance of cash in hand = Rs. 40,000/- (est.)being no account case as returns are filed u/s 44 AD and closing balance of cash is Rs.1,96,925/-. Cash deposits entries are at page 15 to 16.*

- 2) *The total cash deposits during the year is Rs. 8,57,000/- out of which cash sales was Rs. 831625/-, hence the excess amount of Rs 25,375/- was deposited out of profits earned by the appellant during the year, as business income declared and accepted by A.O amounting to Rs. 66,531/-.*
- 3) *The Id. A.O cannot blow hot and cold because at one hand he has accepted appellant's returned income and on the other hand he has made addition of Rs. Rs.8,57,000/- and this amount has arisen out of cash sales = Rs.831625/- and balance cash of Rs 25,375/-out of total profit shown amounting to Rs. 66,531/-. If the A.O is allowed to do so, then that will tantamount to double addition.*

The matter is covered by the following case law

ACIT vs. M/s Hirapanna Jewellers (2020)

ITA No. 253/Viz/2020

96 ITR (Trib) 0024

Copy enclosed at page 64 to 81.

Prayer:- *That the addition is liable to be deleted being not warranted.*

Note:-*Ground no 1 is withdrawn. In the ground no. 3, there is a typographical mistake which is rectified as under:-*

Original Ground:-

That Id. CIT(A) wrongly ignored that, the Id. A.O overlooked the CBDT instruction no. 20/15 dated 29-12-15, while issuing the first notice u/s 143(2) dated 01-08-16 and notice is bad-in-law, as well as, Ultra-vires to the board circular being not mentioning scope of enquiry and reason for selection.

Ground after removing typographical error:-

That Id. CIT(A) wrongly ignored that, the Id. A.O overlooked the CBDT instruction no. 20/15 dated 29-12-15, while issuing the notice u/s 142(1) dated 22-12-17 and notice is bad-in-law, as well as, Ultra-vires to the board circular being not mentioning scope of enquiry and reason for selection.”

7.1. Per contra, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below. He submitted that there is no illegality into the orders of the authorities below. The assessee grossly failed to explain the source of cash deposits in the bank account. The contention of the assessee is that he had carried out certain business activities which are not supported by any plausible evidence. Therefore, the AO was justified in making the addition, treating the cash deposits as unexplained.

8. In re-joinder, Ld. Counsel for the assessee submitted that the account in which cash was deposited belonged to the husband of the assessee, therefore, the assessment deserves to be quashed at threshold itself.

9. I have heard the contentions of Ld. Authorized representatives of the parties and perused the material available on record and gone through the orders of the authorities below. The assessee has challenged the impugned order. **Firstly**, on the basis that the case was taken for limited scrutiny regarding cash deposits in the bank account was more than the turnover. **Secondly**, by way of additional legal ground, the assessment order is assailed on the ground that when the AO accepted the sale proceeds then he cannot be permitted to make addition u/s 69 of the Act. **Thirdly**, it is argued that the AO failed to appreciate the fact that there were cash deposits as well as withdrawals from the bank account of the assessee. The objection of the assessee regarding the AO having exceeded his jurisdiction in view of the Instruction No.20/15 dated 29.12.2015 issued by CBDT is misplaced as the assessee was required to explain the source of cash deposits in the bank account. It is seen from the records that the AO has restricted the scrutiny to

verify the cash deposits in the bank account. Hence, the objection of the assessee that the AO exceeded the jurisdiction is ill-founded hence, rejected. Another plea of the assessee is that the account does not belong to the assessee. Further, bank A/c No.50053185861 maintained with Kangra Central Co-op Bank Ltd., Mubarkpur, it was recorded by the AO that during the year under consideration, the assessee made cash deposits in the said account to the tune of Rs.8,57,000/-. It is further observed by the AO that till the finalization of the assessment, the assessee could not substantiate with documentary evidence about the basis of her gross total turnover of Rs.8,31,625/- disclosed in the Income Tax Return filed on 03.12.2015. Therefore, cash deposited in the bank account No. 50053185861 was treated as unexplained. It is seen from the bank statement furnished by the assessee for the period 01.04.2014 to 31.03.2015, there are deposits and withdrawals from the bank account of the assessee. The total deposits are Rs.8,24,000/- and withdrawals of Rs.9,35,084/-. The AO has not given any finding regarding withdrawals of such amount.

10. Looking to the totality of the facts and circumstances of the present case, I am of the considered view that the authorities below ought to have given a clear finding regarding withdrawals made by the assessee during the year under consideration. Therefore, in view of the facts of the present case, there are debit entries in the bank statement of the assessee. The addition of entire deposits as unexplained was not justified. Hence, the assessee deserves to get benefit of tele-scoping if the benefit of tele-scoping is allowed then the entire addition would not survive. The AO is therefore, directed to delete the addition. Thus, grounds raised by the assessee are partly allowed.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 30th June, 2022.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, AMRITSAR