आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR
& SHRI WASEEM AHMED, ACCOUNTANT MEMEBR

आयकर अपील सं./I.T.A. No. 377/Ahd/2020

(**निर्धारण वर्ष /** Assessment Year : 2015-16)

Chaitanya Bansibhai Nagori Dr. Chaitnya B. Nagori's Institute for infertility & IVF, 4th Floor, Vivan Square, Jodhpur Char Rasta, Satellite, Ahmedabad-380051	**बनाम**/ Vs.	**Principal Commissioner of Income Tax-4** 'C' Wing/Room No.311, 3rd Floor, Pratyakshkar Bhavan, Opp.: Polytechnic, Ambawadi, Ahmedabad - 380015
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAVPN7145C		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी ओर से/**Appellant by :**	Shri P. B. Parmar, Advocate
प्रत्यर्थी की ओर से / **Respondent by :**	Shri Mod. Usman, CIT.D.R. & Shri Purshottam Kumar, Sr. D.R.

सुनवाई की तारीख / **Date of Hearing**	05/05/2022
घोषणा की तारीख /**Date of Pronouncement**	23/05/2022

ORDER

PER MAHAVIR PRASAD, JM:

The appeal has been preferred by the assessee against the order of the Principal Commissioner of Income Tax, Ahmedabad-4 ('PCIT' in short) dated 25.03.2020 arising in the assessment order dated 10.08.2017 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY. 2015-16.

2. The ground of appeal raised by assessee reads as under:

> *"1. On the facts & in the circumstances of the case it is most respectfully submitted that the Ld. Principal Commissioner of Income Tax-4 has erred in Law and on Facts in holding that the order passed u/s 143(3) of The Income Tax Act, 1961 dated 10/08/2017 as erroneous and prejudicial to the interest of revenue and direction of the Ld. Assessing Officer to make fresh assessment, by passing the Order U/s 263 of The Income Tax Act, 1961 dated 25/03/2020."*

3. The brief facts of the case are that the assessee is a doctor (Gynecologist) by profession and has been running a hospital in Ahmedabad. The assessee had purchased an immovable property being sub-plot No. A/23 admeasuring 1371 sq.mtrs along with 194.07 sq.mtrs undivided share in the land used for internal common roads and common plots. Thus, the plot area has been worked out to 1565 sq. mtrs located in the scheme known as "Gala Auram". The said plot has been purchased by the assessee through registered sale deed bearing No.AHD-04-PLD/3042 of 2014 dated 02.05.2014 for a total sale consideration of Rs.1,42,27,200/-. The jantri value as per the stamp duty authority has been worked out to Rs.2,59,34,694/- as the assessee has paid the stamp duty of Rs.12,70,800/- on the jantri value. Thus, there has been difference of Rs.1,17,07,495/- between the jantri value of Rs,2,59,34,694/- and the apparent sale consideration of Rs. 1,42,27,200/-. The Assessing Officer ought to have taxed this difference as income by virtue of the provisions of section 56(2)(vii)(b) of the I.T. Act. It appears that this omission on the part of the A.O. has resulted in passing an erroneous assessment order which also appeared to be prejudicial to the interest of Revenue. It is also noticed that the assessee had furnished a copy of sale agreement executed on 07.07.2010 wherein he has agreed for the sale consideration of Rs.1,42,27,200/-. Further, he was required to deduct the tax at source as per the provisions of section 194-IA of the Act and mentioned such

deduction of tax in the said sale agreement. However, surprisingly, it has also been noticed that there was no provision of section 194IA of the Act existed as on the date of making the sale agreement i.e. on 07.07.2010 as the said provision has been brought in the Statute Book w.e.f. 01.03.2013. Further, it has also been noticed that the sale agreement was made on the stamp paper of Rs.100/- and was not registered before the concerned registering authority. Thus, it is noticed that this sale agreement so made and produced in the assessment proceedings was an afterthought so that the application of provisions of section 56(2)(vii)(b) be avoided in his case. Further, it has been noticed that the payments for the purchase of the said house property had been made from the overdraft account No.474 maintained with Bank of Baroda and the assessee had charged interest of Rs.2,20,524/- in the profit & loss account which was otherwise not to be allowed as business expenditure. However, while making the assessment order, the A.O. has allowed the interest of Rs.2,20,524/- as Revenue expenses (which were those of personal nature- for the purchase of house property- a personal asset). Thus, it appeared that there was an error on the part of A.O. which resulted in passing an erroneous assessment order that appeared to be prejudicial to the interest of Revenue.

4. Considering the above facts, a detailed show cuase notice dated 13.01.2020 has been issued and served on the assesse through ITBA on 14.01.2020. This notice has also been served on the assessee by the Assessing Officer on 23.01.2020. In response to this notice, the assessee has filed a letter dated 24.01.2020 seeking adjournment of 10 days. Vide letter dated 25.01.2020, the assessee has intimated the new residential address. Vide this office notice dated 29.01.2020, the assessee has been asked to attend the hearing on 03.02.2020 either in person or through an

authorized representative. In response to this notice, the reply to the show cause notice was submitted as under:

(i) The/tfasd was selected for limited scrutiny purpose as per the first notice issued u/s 142(1) of the Act dated 26.07.2016 for verification of 7 different issues listed in the said notice and the points relating to verification of "purchase & sale of immovable property" was not covered or mentioned in the said notice. Therefore, the A.O. was not supposed to verify the said details. He could have examined these issues only after taking due permission from the CIT/Pr. CIT which was not done.

(ii) The assessee had agreed to purchase the residential plot of 1565.07 sq. mtrs (i.e. 1,872 sq. yards) for which an agreement to sale was made on 07.07.2010 and reference to this agreement has also been made in the registered sale deed dated 02.05.2014.

(iii) The assessee had already paid an amount of Rs.1,42,27,200/-towards purchase consideration through various cheques during the period 06.07.2010 to 15.10.2011 for which complete details had also been furnished to the A.O. vide letter dated 19.07.2017.

(iv) The first proviso to section 56(2)(b)(ii) of the I.T. Act stipulates that-where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purpose of section 56(2)(b)(ii) of the Act. In view of this proviso, the assessee's case is not covered u/s 56(2)(b)(ii) of the Act.

v) The original booking letter dated 07.07.2010 was not available to the assessee and therefore, the assessee requested the builder/organizer i.e. Aqua Infrastructures for issuing copy of letter and it issued the duplicate copy of booking letter in new format which included the clause of TDS @ 1%. This was nothing but a clerical error of the concerned person of Aqua Infrastructures. The original purchase agreement dated 02.05.2014 exhibits the reference of booking letter dated 07.07.2010 at page 7 of the said agreement.

vi) It has been further contended that no payments have been made from the O.D. bank account no. 474 maintained with Bank of Baroda and no interest of Rs.2,20,524/- has been paid for the purchase of the said property and the entire amount of Rs. 1,42,27,200/- had been paid between the period 06.07.2010 to 15.10.2011 and not during the previous year ending on 31.03.2015.

vii) The interest on housing loan of Rs.9,52,006/- had already been disallowed in the statement of total income out of interest paid of Rs.20,57,926/- against the receipt of gross interest of Rs.1,00,87,887/- as per the accounts.

viii) The overdraft facility has been enjoyed by the assessee for running the hospital against the TOD/FDOD. This fact has also been reported in the tax audit report at Annexure-B."

5. We have heard both the parties at length. This matter was selected by the AO for limited scrutiny purposes as per notice under s.142 of the Act dated 26.07.2016, but the issue was identified for examination:

i. Interest expenses
ii. Income from heads of income other than business/ profession mismatch
iii. Details of Asset and Liabilities
iv. Sales Turnover Mismatch
v. Expenditure of personal nature
vi. Salary Income mismatch

It is pertinent to mention here that point relating to verification of purchase and sale of property was not covered/mentioned in the said notice.

5.1 In the case of Balvinder Kumar vs. PCIT [2021] 125 taxmann.com 83 (Delhi-Trib.), it was held as under:

Section 263 of the Income-tax Act, 1961 - Revision - Order prejudicial to interest of revenue (Scope of) - Assessment year 2015-16 - Assessee's return was selected for limited scrutiny through CASS on issue of substantial increase in capital - Assessing Officer after considering requisite details filed by assessee, passed assessment order without finding any discrepancy on issue under consideration • Subsequently, Principal Commissioner held that Assessing Officer accepted computation of capital gains by assessee without considering any details related to working of indexed cost of acquisition - Principal Commissioner invoked section 263 and passed revisionary order setting aside matter to Assessing Officer for making fresh assessment - Whether in view of CBDT Instruction No. 7/2015, 20/2015 and 5/2016 and CBDT letter dated 30-11-2017, it was established that Assessing Officer could not go beyond reason for selection of matter for limited scrutiny - Held, yes - Whether thus, it would not be open for Principal Commissioner to pass revisionary order and remit matter to Assessing Officer on other aspects by rendering assessment order as erroneous and prejudicial to interest of revenue - Held, yes [Para 11] [In favour of assessee]

5.2 In the matter of Spotlight Vanijya Ltd. vs. PCIT in ITA No.353/Kol/2020 for A.Y. 2015-16 order dated 09.04.2021, it was held by ITAT, Kolkata Bench as under:

> *"6. After hearing both parties and perusal of records, we are of the opinion that the Ld. PCIT could not have exercised his revisional jurisdiction on the issue on which he found fault with the action/omission on the part of AO because in the first place the AO could not have been faulted for not conducting any enquiry on the issue of Insurance Premium (Keyman Policy) of Rs.10,00,000/-, since the assessee's case was selected for scrutiny only for limited purpose under CASS and the issue of Insurance Premium (Keyman Policy) of Rs.10,00,000/- was not the reason for selection of the case for limited scrutiny. Therefore, as per the CBDT circular (supra) the AO could not have initiated enquiry on the issue of Insurance Premium (Keyman Policy) of Rs.10,00,000/- and it is settled law that CBDT circulars are binding on income tax authorities. Therefore in such a scenario, the Ld. PCIT could not have invoked jurisdiction u/s 263 of the Act because he could not have held the AO's order to be erroneous because the AO was justified in not enquiring in to the issue of Insurance Premium (Keyman Policy) of Rs.10,00,000/-, since the AO has gone as per the dictum of CBDT circular on the subject. Therefore, the AO's action/ omission of not looking into the issue of Insurance Premium (Keyman Policy) of Rs.10,00,000/- cannot be termed as erroneous . And, therefore, the Ld. PCIT could not have invoked revisional jurisdiction since AO's omission not to look into the issue of keyman policy was in consonance with the CBDT dictum on the subject and so it cannot be termed as erroneous and prejudicial to Revenue; and the impugned action of Ld. PCIT is akin to do indirectly what the AO could not have done directly. Thus it is noted that Ld. PCIT has ventured to exercise his revisional jurisdiction by issuing SCN dated 13.01.2020 without satisfying the essential condition precedent to invoke the jurisdiction u/s 263 of the Act. Therefore the very initiation of jurisdiction by issuing SCN itself is bad in law and therefore it is quashed. Consequently all further actions/proceeding including the impugned order of Ld. PCIT is non-est in the eyes of law. For this we rely on the decision of this Tribunal in Sanjib Kumar Khemka in ITA No. 1361/ Kol/2016 for AY 2011-12 dated 02.06.2017 wherein it has been held that:*
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> > *"Now coming to the facts of the instant case, we find that the instant case was selected on the basis of AIR Information as evident from the order of AO under section 143(3) of the Act. There is also no whisper in the order of the AO for expanding the scope of limited scrutiny after obtaining the permission from the Administrative CIT. The ld. DR has also failed to bring anything contrary to the argument of the ld. AR. Therefore in our considered view the scrutiny should have been limited only to the information emanating from the AIR. Admittedly, the assessee has claimed to have filed an appeal before Ld. CIT(A) challenging the jurisdiction exceeded by the AO while framing the assessment order u/s 143(3) of the Act. We find that the impugned issue being legal in nature and goes to the root of the matter therefore we are inclined to proceed*

with this issue first by holding that, from the above submission and after examining of the records, we find that the Ld. CIT in his impugned order u/s 263 of the Act has exceeded his jurisdiction while holding the order of AO as erroneous in so far prejudicial to the interest of Revenue. In view of the above we hold that the ld. CIT has in his order u/s. 263 of the Act exceeded the jurisdiction by holding the order of AO as erroneous in so far as prejudicial to the interest of Revenue on those items which are not emanating from the AIR. Thus, we are inclined to adjudicate only those matters which are emanating from the AIR as discussed above."

7. And to the decision of this Tribunal in the case of M/s Chengmari Tea Co. Ltd. in ITA NO. 812/Kol/2019 for AY 2014-15 dated 31.01.2020 which is placed at page 62 to 70 wherein the Tribunal held as under:

"8. Next comes the assessee's second substantive argument that since the Assessing Officer had framed his regular assessment involving limited scrutiny on the above stated issues not including sec. 33AB deduction to the purpose of the impugned withdrawals. We find that the same is duly covered in its favor as per this tribunal's co-ordinate bench's decision in ITA No.1361/Kol/2016 in Sanjeev K. Khemka vs. Pr. Commissioner of Income-Tax-15, Kolkata decided on 02.06.2017 as under:-

"4. We have heard the rival contentions of the parties and perused the materials on record. The primary issue in the case on hand revolves whether it is a case selected under CASS for limited scrutiny or regular scrutiny. It can be seen from the grounds of appeal that the assessee wants to contend that the very initiation of proceedings u/s 143(3) of the Act on the basis of regular scrutiny under the Act was bad in law. The proceedings under section 143(3) of the Act should have been limited to the extent of the information gathered through AIR. Accordingly the proceedings u/s 263 of the Act cannot be expanded beyond the issue raised in AIR. Thus the order u/s 143(3) of the Act beyond the points of AIR is invalid in law and so the same is with the order passed u/s 263 of the Act. It is the further contention of the assessee that in the items which are not subject matter of AIR cannot subject matter of scrutiny. Such matters include salary of the assessee, loans & interest on loans, payment of LIC, Commission & brokerage income etc. It is the case of the assessee that in the assessment order passed u/s 143(3) of the Act, the AO has travelled beyond the points of the AIR on the basis of which the case of scrutiny was selected under CASS module. It is the plea of the assessee that when no addition/disallowance can be made beyond the points mentioned in AIR in the assessment proceedings then same is the case with proceedings initiated u/s 263 of the Act.

9. This tribunal's yet another decision in ITA No.1011/Kol/2017 in Sri Hartaj Sewa Singh vs. DCIT,(IT),Circle1(1), Kolkata decided on 27.04.2018 also decides the instant issue in assessee's favour on identical reasoning. We conclude in these facts and circumstances that

the PCIT has erred in law and on facts in holding the impugned assessment as erroneous causing prejudice to the interest of Revenue on the ground which nowhere formed subject-matter of the CASS scrutiny as it is evident from the case records. We reiterate the learned co-ordinate bench's detained reasoning hereinabove that the sec. 263 revision proceedings ought not to have been set into motion for expanding the jurisdiction of the Assessing Officer to examine the issues beyond the scope of limited scrutiny. We therefore reverse the PCIT's action assuming sec. 263 revision jurisdiction in these facts and circumstances."

8. In the light of the discussion and case laws (supra), we are inclined to hold that the very initiation of revisional proceedings by issue of SCN dated 13.01.2020 by Ld PCIT itself is bad in law and therefore it deserves to be quashed and we order accordingly. Consequently all further actions/proceeding including the impugned order of Ld. PCIT is null in the eyes of law."

5.3 In the case of Dharmin N. Thakkar vs. ITO in ITA No. 1378/Ahd/2019 for A.Y. 2015-16 order dated 27.04.2022, the co-ordinate bench held as under:

"9. We have heard the rival contentions of both the parties and perused the relevant materials available on record before us. Admittedly, the case of the assessee was selected under "Limited Scrutiny" scheme as evident from the notice u/s 143(2) of the Act, placed on page 8 of the paper book. As per the CBDT instruction No. 20/2015 dated 29/12/2015 and instruction No. 05/2016 dated 14-07-2016 the Assessing Officer in case of "Limited Scrutiny" can only examine those issues for which the case has been selected or the issue mentioned therein. If the AO is of the view that there is a potential escapement of income, he may convert the "Limited Scrutiny" into "Complete Scrutiny" but such view should be reasonable view based on credible information or material available on record. Furthermore, there should be direct nexus between such view and information/material. The relevant portion of the instruction stands as under:

"3. As far as the returns selected for scrutiny through CASS-2015 are concerned, two type of cases have been selected for scrutiny in the current Financial Year-one is 'Limited Scrutiny' and other is 'Complete Scrutiny', The assessees concerned have duly been intimated about their cases falling either in 'Limited scrutiny' or 'Complete Scrutiny' through notices issued under section 143(2) of the Income-tax Act, 1961 CAct1). The procedure for handling 'Limited Scrutiny' cases shall be as under:

a. In 'Limited Scrutiny' cases, the reasons/issues shall be forthwith communicated to the assessee concerned.

b. The Questionnaire under section 142(1) of the Act in 'Limited Scrutiny' cases shall remain confined only to the specific reasons/issues for which case has been picked up

for scrutiny. Further, the scope of enquiry shall be restricted to the 'Limited Scrutiny1 issues? "

c. These cases shall be completed expeditiously in a limited number of hearings,

d. 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. Such cases shall be monitored by the Range Head concerned.

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"2, In order to ensure that maximum objectivity is maintained in converting a case falling under 'Limited Scrutiny' into a 'Complete Scrutiny' case, the matter has been further examined and in partial modification to Para 3(d) of the earlier order dated 29.12.2015, Board hereby lays down that while proposing to take up 'Complete Scrutiny' in a case which was originally earmarked for 'Limited Scrutiny', the Assessing Officer ('AO') shall be required to form a reasonable view that there is possibility of under assessment of income if the case is not examined under 'Complete Scrutiny', In this regard, the monetary limits and requirement of administrative approval from Pr. CIT/CIT/Pr, DIT/DIT, as prescribed in Para ?(d) of earlier Instruction dated 29,12.2015, shall continue to remain applicable.

3. Further, while forming the reasonable view, the Assessing Officer would ensure that:

a. there exists credible material or information available on record for forming such view;

b. this reasonable view should not be based on mere suspicion, conjecture or unreliable source; and

c. there must be a direct nexus between the available material and formation of such view."

9.1 However, on perusal of the notice for "Limited Scrutiny" we find that there was no mentioning/whisper about examination of the cash in hand. As such, the case was selected on account of deposit of cash in the bank but the closing cash in hand balance was added to the total income of the assessee. To our understanding, the deposit of cash in the bank and the closing cash in hand are two different items. However, the AO has not made any addition qua the deposit of cash for which the case was selected under scrutiny. Accordingly, we hold that the Assessing Officer has exceeded his jurisdiction by treating the closing cash in hand as income from undisclosed sources which was not mandated under the "Limited Scrutiny" notice issued under section 143(2) of the Act.

9.2 The Ld. DR before us has not brought anything on record justifying that the "Limited Scrutiny" was converted by the Assessing Officer under normal scrutiny after obtaining necessary approval from the appropriate authority.

9.3 We are also not convinced with the argument of the learned DR that the issue raised by the AO is limited to the cash in hand available at the end of the financial year under consideration. It is because if we admit the contention of the learned DR then the same will be beyond the scope of limited scrutiny as there was no question raised in the notice issued for the limited scrutiny under section 143(2) of the Act for the cash balance. The right course of action for the AO was to take the approval from the competent authority for expanding the scope of Limited Scrutiny to the regular assessment but he failed to do so. Thus, in our considered view inaction of the AO should not cause any harassment to the assessee.

9.4 In holding so we draw support and guidance from the order of the Hon'ble Chandigarh Tribunal in case of Rajesh Jain vs. ITO reported in 162 taxman 212 where it was held as under:

> *The jurisdiction of the Assessing Officer in such cases where the notices are issued for limited scrutiny is confined to the claims he has set out in the notice for verification. This position of law was further elaborated by the CBDT in its Circular No. 8/2002, dated 27-8-2002, The CBDT Circular clarifies that the Assessing Officer does not have the powers to make the entire assessment of income in limited scrutiny cases. Now question had to be decided when the Assessing Officer does not have the powers while making limited scrutiny assessment to decide such issues which are not covered by the Jim/ted scrutiny notice, the Commissioner (Appeals) on appeal against limited scrutiny assessment can exercise the powers in excess of the power vested with the Assessing Officer. There is no doubt that the power of the Commissioner (Appeals) is co-terminus with the power of the Assessing Officer. So, however, in the instant case, when the Assessing Officer did not have the power to make a full-fledged assessment in limited scrutiny cases, the Commissioner (Appeals)'s power could not be enlarged beyond the power of the Assessing Officer in limited scrutiny cases. So, it was considered appropriate to remit the issue relating to allowance of depreciation in respect of the plinth to the file of the Assessing Officer for the purpose of fresh decision in accordance with law. Since the notice under section 143(2)(i) was issued for limited scrutiny, the Assessing Officer was precluded from considering any other issue while making the assessment under section 143(3) under limited scrutiny. The decision of the Commissioner (Appeals) in considering the other claim of the assessee not covered in the notice issued under sect/on 143(2)(i) for limited scrutiny was contrary to the provisions of the Act and, accordingly, was set aside.*

9.5 In view of the above and after considering the facts in totality as discussed above, we are not convinced with the finding of the authorities below. As such the entire issue should have been limited to the extent of the dispute raised in the notice under section 143(2) of the Act for the limited scrutiny but the AO in the

present case has exceeded his jurisdiction as discussed above. Thus the ground of appeal of the assessee is allowed.

9.6 As the assessee is succeeded on the technical issue raised by him, we refrain ourselves from adjudicating the other issues raised on merit. Accordingly, the issues raised by the assessee on merit become infructuous. Hence we dismiss the same as infructuous.

10. In the result, the appeal of the assessee is partly allowed."

5.4 In the matter of Shri Narendrakumar Rameshbhai Patel vs. DCIT in ITA No. 981/Ahd/2019 order dated 20.03.2020, the co-ordinate bench held as under:

"4. Brief fact is that the assessee is an individual and claimed to have earned income under the head capital gain and other sources. The assessee during the year under consideration along with 4 other co-owners sold a piece of land admeasuring 4234 square meters in which he held his share for 30%. The assessee declared capital of Rs. 1,48,86,543/- after claiming deduction of Rs. 2,03,58,578/- under section 54 of the Act.

5. Subsequently, the return of the assessee was selected for limited scrutiny and the notice was issued under section 143(2) of the Act for examining the issues as detailed under:

- *(i) Sale of property mismatch*
- *(ii) Mismatch in income/capital gain on sale of land or building*
- *(iii) Deduction claimed under the head capital gain*
- *(iv) Increase in capital*

During the proceedings the AO observed from the submission of the assessee and information received from the Revenue authority that the impugned land was purchased by the assessee along with co-owner as agricultural land bearing 3 different survey numbers. Later on such land was converted as NA and different survey numbers merged as single survey no. Thereafter the assessee and co-owner made application for plotting of the land which was approved. The assessee with co-owners further initiated residential as well as commercial building project on the impugned land. Accordingly the AO held that the activity carried out by the assessee along with other co-owner amount to business activity. Thus the AO held the impugned sale as business receipt and disallowed the deduction claimed under section 54 of the Act.

6. Aggrieved, assessee preferred an appeal before learned CIT (A).

7. The assessee before learned CIT (A) submitted that the AO has travelled beyond the jurisdiction provided under the limited scrutiny. The notice under section 143(2) was issued only for the purpose of investigation of mismatch of income with form 26AS. But the AO converted the limited scrutiny into complete scrutiny and held the capital receipt as business receipt without obtaining any

approval from the higher authority. The AO in this process violated the notification issued by the CBDT bearing no. 7/2014 dated 26th Sept, 2014 and notification no 20/2015 dated 29th Dec, 2015. Accordingly the assessee prayed to the leaned CIT (A) to hold the assessment as void and bad in law.

8. The ld. CIT-A called for the remand report from the AO who in turn submitted that the contention of the assessee is unacceptable as the notice was issued with respect sale of property and all the investigation was carried out during the proceedings only related to such sale of property. Therefore he/she did not travel beyond the jurisdiction.

8.1 The learned CIT (A) after considering the submission of the assessee and remand report confirmed the action of the assessee by holding as under:

> *"5.2 I have carefully considered the facts of the case, submissions made by the appellant, remand report and the order of the AO. So far as the ground no, 1 of the appeal is concerned, it does not relate to the assessment order which has been appealed against but raised for pointing out the procedural lapses and not arising out of the issues determined by the Assessing Officer in the assessment order. The appellant has contended that the case was selected for limited purpose scrutiny and the A.O. did not obtain the prior approval of the Pr. CIT for converting the same into complete scrutiny as per the existing instructions of the CBDT. Vide letter dated 24.08.2017, the appellant has requested to examine the mismatched figures of sales, capital gain income for the sold property and capital gain income shown in the return of income. It has been noticed that the case was selected for limited purpose for sale of property and consequent capital gain and deduction form capital gain. Therefore, the A.O. has examined these issues revolving around the charging of capital gain, claim deduction there from u/s.54F of the Act and the A.O. did not even touch the issues beyond these issues such as income from house property, profit of the business etc. Thus, he has not travelled beyond the limited jurisdiction and not contravened the instructions of the Board issued from time to time and quoted by the appellant through paper book. The appellant's contention that the AO has treated the land transaction as an adventure in the nature of trade instead of allowing the capital gain without obtaining the approval of the competent authority and thus expanded the scope of scrutiny is also not legally tenable as the AO has every right to look into the nature of transaction within the limited space given for scrutiny. Just because the AO has treated the land transaction as adventure in the nature of trade, he has stepped out of the scope of limited scrutiny is not acceptable. I have perused the relevant instructions in this regard and found that the instructions are with regard to the issues identified through CASS. This case was also selected for limited scrutiny through CASS in F.Y. 2016-17 and accordingly notice u/s.143(2) was issued as is evident from the first para of the assessment order. Further, the appellant has also filed copies of notices issued u/s. 143(2) on pages 6 & 7 of the paper book wherein four issues have specifically been mentioned on which the limited scrutiny is proposed to be conducted. Item no.3 of the issue is - "Deduction claimed under the head capital gain". Thus the*

AO has confined himself to the limited issue of claim made under the head capital gain. However, on further scrutiny, when he found that the capital gain claimed is not correct as the transaction is found to be an adventure in the nature of trade, he has denied this claim. Thus, this contention of the appellant is rejected as the AO has not gone beyond the mandate given, yes he made an intense enquiry by delving deep in the issue. The scrutiny carried out is not horizontal but vertical on which there is no censor. Question of seeking permission for conversion from 'Limited Scrutiny' to the 'Complete Scrutiny' would have arisen when the AO would have noticed any other issue apart from those four issues identified in CASS. As there is no such issue, there was no need to seek permission of PCIT. The appellant has relied on the decision of ITAT, Mumbai in the case of ITO vs. Pericles foods (P) Ltd. decided on 31,07.2007 and in relation to the AY 2001-02. At the relevant time, the scrutiny assessments were governed under two distinct provisions of section 143(2)0) and 143(2)(ii) of the Act and the scope of scrutiny assessment was confined to the issues as provided in section 143(2)([) of the Act, i.e. loss, exemption, deduction or relief claimed in the return was found inadmissible, the A.O. was empowered to issue the notice u/s.143(2)(i) of the Act so as to verify the limited issue. Therefore, the citation relied on in respect of A.Y.2001-02 wherein the scope of powers of the A.O. u/s 143(2)(i) were examined in the given set of facts in that case. Since in the present case of the appellant, the facts are quite different and cannot be compared with the facts of the relied upon case. Similarly, the reliance placed on the case of Rajesh Jain v/s ITO [2007] 162 Taxman 212 (Chandigarh) is also not of any help to the appellant as the facts are clearly distinguishable. Considering the factual and legal aspects of the issue of limited scrutiny assessment, the ground no.1 is rejected."

9. Being aggrieved by the order of the Ld. CIT(A) the assessee is in appeal before us.

10. The Ld.AR before us filed 3 paper books namely paper book-I, II and III running from pages 1 to 74, pages 1 to 94 and pages 1 to 130 and drew our attention on page 1 to 2 of the paper book-I where the notice for "Limited Scrutiny" issued u/s 143(3) of the Act was placed. The Ld. AR further claimed that the Assessing Officer has converted the "Limited Scrutiny" to the normal/regular scrutiny u/s.143(3) of the Act, on the basis of document received from Revenue authority without taking necessary approval from the appropriate authority.

11. On the other hand the Ld. DR submitted that the AO has examined the property sold during the year and arrived at the conclusion that the assessee is carrying out the business of property development. Hence he has not traveled beyond the scope of limited scrutiny. The learned DR vehemently supported the order of the authorities below.

12. We have heard the rival contentions of both the parties and perused the relevant materials available on record before us. Admittedly, the case of the assessee was selected under "Limited Scrutiny" scheme as evident from the

notice u/s 143(2) of the Act, placed on page 1 of the paper book-I. As per the CBDT instruction No.20/2015 dated 29/12/2015 and instruction no 05/2016 dated 14-07-2016 the Assessing Officer in case of "Limited Scrutiny" can only examine those issues for which the case has been selected or the issue mentioned therein. If the AO of the view that there is a potential escapement of income, he may convert the "Limited Scrutiny" into "Complete Scrutiny" but such view should be reasonable view based on credible information or material available on record. Furthermore, there should be direct nexus between such view and information/material. The relevant portion of the instruction stands as under:

> *"3. As far as the returns selected for scrutiny through CASS-2015 are concerned, two type of cases have been selected for scrutiny in the current Financial Year-one is 'Limited Scrutiny' and other is 'Complete Scrutiny'. The assessees concerned have duly been intimated about their cases falling either in 'Limited scrutiny' or 'Complete Scrutiny' through notices issued under section 143(2) of the Income-tax Act, 1961 ('Act'). The procedure for handling 'Limited Scrutiny' cases shall be as under:*
>
> > a. *In 'Limited Scrutiny' cases, the reasons/issues shall be forthwith communicated to the assessee concerned.*
> > b. *The Questionnaire under section 142(1) of the Act in 'Limited Scrutiny' cases shall remain confined only to the specific reasons/issues for which case has been picked up for scrutiny. Further, the scope of enquiry shall be restricted to the 'Limited Scrutiny' issues? "*
> > c. *These cases shall be completed expeditiously in a limited number of hearings.*
> > d. *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. Such cases shall be monitored by the Range Head concerned.*

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> *"2. In order to ensure that maximum objectivity is maintained in converting a case falling under 'Limited Scrutiny' into a 'Complete Scrutiny' case, the matter has been further examined and in partial modification to Para 3(d) of the earlier order dated 29.12.2015, Board hereby lays down that while proposing to take up 'Complete Scrutiny' in a case which was originally earmarked for 'Limited Scrutiny', the Assessing Officer ('AO') shall be required to form a reasonable view that there is possibility of under assessment of income if the case is not*

examined under 'Complete Scrutiny'. In this regard, the monetary limits and requirement of administrative approval from Pr. CIT/CIT/Pr. DIT/DIT, as prescribed in Para ?(d) of earlier Instruction dated 29.12.2015, shall continue to remain applicable.

3. Further, while forming the reasonable view, the Assessing Officer would ensure that:

a. there exists credible material or information available on record for forming such view;

b. this reasonable view should not be based on mere suspicion, conjecture or unreliable source; and

c. there must be a direct nexus between the available material and formation of such view."

13. However, on perusal of the notice for "Limited Scrutiny" we find that there was no mentioning/whisper about examination of the fact whether the assessee was engaged in the business of property development. Accordingly, we hold that the Assessing Officer has exceeded his jurisdiction by denying the deduction claimed under section 54 of the Act on the reasoning that the assessee is engaged in the business of property development as the same was not mandated under the ''Limited Scrutiny" notice issued under section 143(2) of the Act.

14. We are also conscious about the fact that this tribunal in the case of the co-owner namely Shri Harshadkumar Amrutlal Patel in ITA No. 361/AHD/2019 has decided the issue against the assessee on merit. Accordingly, the question arises once the issue involved in the case of the co-owner has been decided against the assessee, then can the Bench take of contrary view from the case of other co-owners. However, we find that the technical issue raised by the assessee in the case on hand was not there in the case of co-owner namely Shri Harshadkumar Amrutlal Patel. Thus we are adjudicating the present appeal from altogether a different perspective. Thus, the question of taking the contrary view does not arise.

15. In the case of the other co-owner namely Shri Harshadkumar Amrutlal Patel there was the regular assessment under section 143(3) of the Act, whereas in the present case, it is the case of the Limited Scrutiny. Accordingly, we hold that the facts of the case on hand are different with the facts of the case in the case of Shri Harshadkumar Amrutlal Patel. As the issue involved is different, then the bench is not bound to follow the decision of the coordinate bench taken in the case of the co-owner.

16. The Ld.DR before us has not brought anything on record justifying that the "Limited Scrutiny" was converted by the Assessing Officer under normal scrutiny after obtaining necessary approval from the appropriate authority.

17. We are also not convinced with the argument of the learned DR that the issue raised by the AO is limited to the activity of the sale of the property only. It is because if we admit the contention of the learned DR then the head of income from capital gain will also get change to the business income despite the fact that there was no question raised in the notice issued for the limited scrutiny

under section 143(2) of the Act. The right course of action for the AO was to take the approval from the competent authority for expanding the scope of Limited Scrutiny to the regular assessment but he failed to do so. Thus, in our considered view inaction of the AO should not cause any harassment to the assessee.

18. In holding so we draw support and guidance from the order of the Hon'ble Chandigarh Tribunal in case of Rajesh Jain vs. ITO reported in 162 taxman 212 where it was held as under:

> *The jurisdiction of the Assessing Officer in such cases where the notices are issued for limited scrutiny is confined to the claims he has set out in the notice for verification. This position of law was further elaborated by the CBDT in its Circular No. 8/2002, dated 27-8-2002.*
> *The CBDT Circular clarifies that the Assessing Officer does not have the powers to make the entire assessment of income in limited scrutiny cases. Now question had to be decided when the Assessing Officer does not have the powers while making limited scrutiny assessment to decide such issues which are not covered by the limited scrutiny notice, the Commissioner (Appeals) on appeal against limited scrutiny assessment can exercise the powers in excess of the power vested with the Assessing Officer. There is no doubt that the power of the Commissioner (Appeals) is co-terminus with the power of the Assessing Officer. So, however, in the instant case, when the Assessing Officer did not have the power to make a full-fledged assessment in limited scrutiny cases, the Commissioner (Appeals)'s power could not be enlarged beyond the power of the Assessing Officer in limited scrutiny cases. So, it was considered appropriate to remit the issue relating to allowance of depreciation in respect of the plinth to the file of the Assessing Officer for the purpose of fresh decision in accordance with law. Since the notice under section 143(2)(i) was issued for limited scrutiny, the Assessing Officer was precluded from considering any other issue while making the assessment under section 143(3) under limited scrutiny. The decision of the Commissioner (Appeals) in considering the other claim of the assessee not covered in the notice issued under section 143(2)(i) for limited scrutiny was contrary to the provisions of the Act and, accordingly, was set aside.*

In view of the above and after considering the facts in totality as discussed above, we are not convinced with the finding of the authorities below. As such the entire issue should have been limited to the extent of the dispute raised in the notice under section 143(2) of the Act for the limited scrutiny but the AO in the present case has exceeded his jurisdiction as discussed above. Thus the ground of appeal of the assessee is allowed.

19. As the assessee is succeeded on the technical issue raised by him, we refrain ourselves from adjudicating the other issues raised on merit. Accordingly, the issues raised by the assessee on merit become infructuous. Hence we dismiss the same as infructuous.

20. In the result, the appeal of the assessee is partly ***allowed.***

5.5 In view of the above, as the present case was selected for limited scrutiny, in our considered opinion, learned PCIT has exceeded his power for requiring the details of sales and purchase of the immovable property. Thus, in parity with the above said Tribunals orders, we allow the assessee's appeal.

6. In the result, the appeal filed by the Assessee is allowed.

This Order pronounced in Open Court on 23/05/2022

Sd/-	Sd/-
(WASEEM AHMED)	(MAHAVIR PRASAD)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Ahmedabad: Dated 23/05/2022

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।