

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH,KOLKATA

**SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
SHRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No.669/Kol/2024
(Assessment Year 2015-16)**

Subodh Adhikary,

C/o S.N. Ghosh & Associates,
Advocates Sagar Mansion, 2,
Garstin Place, 2nd Floor,
Suite Nos. 202 & 203, Hare Street,
Kolkata – 700001
[PAN: AIMPA4782F]

.....**Appellant**

vs.

ITO Ward 51(1), Kolkata,

Income Tax Office,
DS-IV, Uttarapan Complex,
Ultadanga, Maniktala Civic Centre,
Kolkata – 700067

.....**Respondent**

Appearances by:

Assessee represented by : Somnath Ghosh, Advocate

Department represented by : P.N. Barnwal, CIT,DR

Date of concluding the hearing : 13.11.2025

Date of pronouncing the order : 07.01.2026

O R D E R

Per Rajesh Kumar, AM

The present appeal filed by the assessee arises from order dated 05.10.2021 passed u/s 250 of the Income Tax Act, 1961 (hereafter referred to as “the Act”) by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereafter referred to as “the Ld. CIT(A)].

2. At the time of hearing, we observe from the appeal folder that there is a delay of 848 days qua which the assessee filed condonation petition

along with affidavit. We observe from the condonation petition that the tax matters of the assessee were handled by tax practitioner Shri Mihir Kumar Bandyopadhyay, an Ex-PCCIT and DGIT (Inv.). The said consultant was inflicted with Novel Corona Virus during May, 2021 and he was very serious. He had to be hospitalised. After discharge from the hospital, he took a very long time to get back to his work. Even thereafter, he was suffering from many sever complications and other health ailments. He finally passed away on 04.02.2022. Consequently, the assessee was unaware of the impugned appellate order dated 05.10.2021 of Ld. CIT(A) as no physical service was made. It is only when the assessee got a notice in physical form directing the assessee to deposit the tax dues, the assessee came to know about the said order having been passed by the appellate authority. Immediately thereafter, the steps was taken to file the appeal and eventually filed on 01.04.2024. Considering the reasons cited before us to be genuine and bonafide, we are inclined to condone the delay ad admit the appeal for adjudication.

3. The first issue raised by the assessee in Ground No. 1 and 2 is general in nature and needs no specific adjudication.

4. The first issue raised by the assessee in beginning is against the order of Ld. CIT(A) confirming the additions made in Ground No. 3, 4, 5 and 6 wrongly and invalidly by upholding the order of AO on the issues which were not subject matter of limited scrutiny. It was submitted that when the AO started enquiry there was no jurisdiction and authority with AO to call for the explanation/evidences from the assessee on these points. The Ld. Counsel for the assessee submitted that the assessee filed the return of income on 11.01.2016 declaring total income at Rs. 5,86,810/- which was selected for scrutiny under CASS. The notice u/s 143(2) and 142(1) of the Act along with questionnaire were issued. The Ld. AR drew to our attention the notice issued u/s 143(2) of the Act dated

29.07.2016 wherein the case was selected for limited scrutiny for examination of issue of cash deposit.

5. The Ld. AR drew our attention to order sheet entry dated 30.10.2017 and pointed out that though the case was selected for limited scrutiny, the AO called for the information/details/explanation about the issues which were not subject matter of the limited scrutiny. The Ld. AR thereafter referred to the order sheet entry dated 01.12.2017, wherein the AO issued letter dated 30.11.2017 wherein the conversion of scrutiny into complete scrutiny was communicated to the assessee and accordingly he was asked to explain the sources of funds w.r.t. purchase transactions and sale of properties. The Ld. AR therefore, submitted that so far as the addition made by the AO in respect of Short-Term Capital Gain of Rs. 2,26,77,110/- in Ground No. 3, Rs. 1,10,12,228/- u/s 56(2)(vii)(b)(ii) of the Act, in Ground No. 4 and Rs. 2,84,88,545/-, in Ground No. 5 and 6 in respect of unexplained investment are concerned, the same were without jurisdiction as the AO has no authority under the Act to initiate the enquiry and call for record/explanation from the assessee on that date when the case of the assessee was selected for limited scrutiny and there was no conversion of the limited scrutiny to complete scrutiny. The Ld. AR submitted that on the date of issue of notice u/s 142(1) of the Act on 05.06.2017 calling for the information/details/explanation from the assessee other than on the issue of cash deposit is without jurisdiction. Therefore, the procedure laid down under the Act has not been followed which is in violation to Circular Board Instruction NO. 5/2016 of CBDT dated 14.07.2016. and accordingly, the same are invalid, without jurisdiction and have to be deleted. In defense of his arguments the Ld. A.R. relied on the decision of the Co-ordinate Bench of Chandigarh in the case of Shri Vijay Kumar vs. ITO in ITA No. 434/Chad/2019 for AY 2014-15 dated 12.09.2019 and the decision of Co-ordinate Bench of Delhi in the case of Dev Milk Foods Pvt. Ltd. vs. Addl. CIT in ITA No. 6767/De1/2019 for AY 2015-16 dated 12.06.2020.

6. The Ld. DR on the other hand relied heavily on the order of authorities below by submitting that though notice u/s 142(1) of the Act was issued on 05.06.2017 wherein the details were called for from the assessee qua the issues which were not part of limited scrutiny. Though finally on 01.12.2017 the AO handed over the letter dated 30.11.2017 to the assessee's counsel for conversion of limited scrutiny into complete scrutiny. Therefore, the issues raised by the counsel of the assessee is devoid for any merit may kindly be dismissed.

7. After hearing the rival contentions and perusing the material available on record, we find that the AO issued notice u/s 143(2) which is for limited scrutiny for examination of cash deposits. For the sake ready reference, the notice issued u/s 143(2) of the Act dated 29.07.2016 is extracted below:

"Notice under section 143(2) of the Income Tax Act, 1961 Limited Scrutiny

Sir/Madam/M/s

This is for your kind information that the return of income for Assessment Year 2015-16 filed vide ack. no. 927764970110116 on 10/01/2016 has been selected for Scrutiny. Following issues have been identified for examination:

i. Cash Deposit

2. In view of the above, we would like to give you an opportunity to produce, or cause to be produced, any evidence which you feel is necessary in support of the said return of income on 13/09/2016 at 01:30 PM in the office of the undersigned.

3. Sending a communication to the undersigned in this regard shall also be treated as sufficient compliance in no evidence is sought to be produced as required in Para 2 above.

4. Specific questionnaire/ show-cause notice shall be sent giving you another opportunity in case any adverse view is contemplated.

5. (#) The assessment proceeding in your case is proposed to be conducted through email based communication. The email provided in the said return of income shall be used for communication for this purpose. In case you wish to communicate through any other alternate email, the same may kindly be informed. A brief note regarding benefits of this facility and procedure is enclosed overleaf. In case you do not wish to participate in this taxpayer friendly initiative, you may convey your refusal to the undersigned by the above mentioned date. In case, you

wish to opt out from this scheme at any subsequent stage due to any technical difficulties faced by you, the same can be done with prior intimation to the undersigned.

(#) applicable only in case of taxpayers whose Income-tax jurisdiction falls in the cities of Ahmedabad, Bengaluru, Chennai, Delhi, Hyderabad, Kolkata or Mumbai.”

8. Thereafter, we note that the AO issued notice u/s 142(1) of the Act dated 05.06.2017 raising certain points and calling upon the assessee to furnish evidences/explanations on those issues which were not the subject matter of limited scrutiny. The extracts of the notice are as below:

“In connection with the assessment for the assessment year 2015-16 you are required to:

*(a)** Prepare a true and correct return of your income/the firm's income/family's income/the local authority's income/the company's income/income of the A.O.P./income of the body of individuals/Income of Income Tax Act, 1961 during the previous year relevant to the assessment year mentionedin respect of which you are assessable under the above. The return should be in the appropriate form as prescribed in Rule 12 of the Income Tax Rules, 1962. A blank return form is enclosed. It should be duly verified and signed in accordance with the provisions of section 140 of the said Act and delivered at my office on or before 31 July 2013.*

*(b)** produce or cause to be produced before me at my office at Manicktala Civic Centre, Uttarapan Complex, Kolkata - 540 015 on 15.06.2017 at 1.30 P.M. the accounts and/or documents specified overleaf.*

(As mentioned overleaf)

*(c)** furnish in writing and verified in the prescribed manner information called for as per annexures and on the points or matters specified therein before me at my office atonat AM/PM.”*

Particulars of Accounts and/or documents required:-

- 1) *Copy of all Bank Statements for the F. Yr. 2014-15 relevant to the A.Y 2015-16.*
- 2) *Copies of complete set of Audited accounts along with P/L a/c. & B/Sheet for the F. Yr. 2014-15 relating to the A. Yr 2015-16*
- 3) *Hard copy of return for the A.Y. 2015-16 along with computation of income.*
- 4) *Supporting evidences claimed deduction under chapter VI-A*
- 5) *As per 'CASS' information - i) Large cash deposits in savings bank account and assessee has also transferred one or more property(ies) during the year*

ii) Large cash deposits in savings bank account(s) (other cases) ----- Please explain with evidentiary documents."

Thereafter the AO vide various order sheet entries required the assessee to furnish informations on those issues which were not subject matter of the limited scrutiny. For the sake of ready reference the order sheet entries are extracted as under:

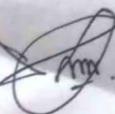
Page - ③

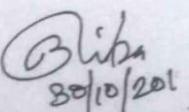
Subodh Adhikary

2015-16

30/10/2017

Shri Biplob Kr. Mitra, ATR, appeared. The case was partly discussed. Shri Mitra has been arced to produce copies of PSL & Balance Sheet. He has also been arced to explain source of fund in the purchase transaction and details of disclosure of the income generated from sale transactions. Adjourined to 31/10/2017 at 03.00 pm.

 Subodh Adhikary
30/10/2017

 Biplob Kr. Mitra
30/10/2017

CERTIFIED TRUE COPY

Arup Bhattacharya
অরূপ ভট্টাচার্য
ARUP BHATTACHARYA
জনসচিব, পদ-৩/১, কলকাতা
Income Tax Circle, West-3/1, Kolkata
কলকাতা সদর নং: WBCH-149-91



Swallow Hawking

2015-16

Page 4

01/12/2017

Shri Biplob Kr. Mitra, A.R. appeared.
He was been issued a copy of letter dt.
30/11/2017 wherein the conversion of Scanting
form limited to wider has been communicated
He has also been asked to explain source
of funds i.e. purchase transactions and
details of disclosure of income from
sale of properties. The case is partly
heard and adjourned to 04/12/2017 at
03.30 P.M.

Qlibn
01/12/2017

15/12/2017

Shri Biplob Kr. Mitra, ATR, appeared.
The case was partly discussed. Adjourned
to 18/12/2017 at 02.30 pm.

~~mm. 15/12/2017.~~

John
15/12/2013

CERTIFIED TRUE COPY



Arup Bhattacharyya
অরূপ ভট্টাচার্য
ARUP BHATTACHARYYA
স্টেট টেক্স অফিস, পৰ্ম-50(1), কলকাতা
Income Tax Officer, Ward-50(1), Kolkata
সোডা কোড নং: WBG-W-149-91

9. After hearing the rival contentions and perusing the material on record, and also notice dated 143(2) dated 29.07.2016 issued for limited scrutiny covering one issue namely cash deposits. Subsequently in the

notice issued u/s 142(1) dated 05.06.2017 and order sheet entries , the AO called for information on those issues which were not in the scope of limited scrutiny and even prior to conversion of limited scrutiny to complete scrutiny on 01.12.2017. The AO has started enquiries during the assessment proceedings on the issues even prior to the date of conversion of limited scrutiny to complete scrutiny. In our view this is in complete disregard of the Instruction No. 5/2016 issued by CBDT on 14.07.2016 which provides that while proposing to take up complete scrutiny which was fixed for limited scrutiny, the AO shall form a reasonable view that there is a possibility of under-assessment of income if the case is not examined under complete scrutiny and that plea has to be on the existence of the credible material not merely on suspicion and conjecture or unreliable sources. We note that the instruction provide that there has to be a direct nexus between the available material and formation of such view. The relevant part of the instruction are reproduced as under:

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 3(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.

4. It is further clarified 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. Only upon conversion of case to 'Complete * Scrutiny' after following the procedure outlined above, the AO may examine the additional issues besides the issue(s) involved in 'Limited Scrutiny'. The AO shall also expeditiously intimate the taxpayer concerned regarding conducting 'Complete Scrutiny' in such cases."

10. Instruction no. 4 provides only complete scrutiny after following the procedure laid down above and the AO may examine the additional issues besides the issue involved in limited scrutiny and AO shall also expeditiously conducted complete scrutiny in such cases. We note that in the present case there has been a complete violation of the Circular issued by the CBDT. The case of the assessee finds support from the decision of Co-ordinate Bench of Delhi in the case of Dev Milk Foods Pvt. Ltd. (supra) wherein it has been held as under:

"6.0 We have heard the rival submissions and have also perused the material on record. After considering the entire factual matrix we first deal with the primary arguments of the Ld. Authorized Representative that the conversion of the case from limited scrutiny to completer scrutiny was not legally valid. The subject of conversion of case from limited scrutiny to complete scrutiny has been dealt with in CBDT Instruction No.5/2016 which is being reproduced herein under for the sake of convenience:

"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 3(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.

6. To ensure proper monitoring in cases which have been converted from 'Limited Scrutiny' to 'Complete Scrutiny', it is suggested, that provisions of section 144A of the Act may be invoked in suitable cases. To prevent possibility of fishing and roving enquiries in such cases, it is desirable that these cases should invariably be picked up while conducting Review or Inspection by the administrative authorities.

7. The above Instruction shall be applicable from the date of its issue and would cover the cases selected under CASS 2015 which are pending scrutiny cases as well as cases selected/being selected under the CASS 2016."

6.1 Earlier preceding instruction in this regard was 20/2015 which states as under:

"Instruction No. 20/2015

Government of India

Ministry of Finance

Department of Revenue

Central Board of Direct Taxes

North Block, New Delhi, the 29th of December, 2015

Subject: Scrutiny Assessments-some important issues and scope of scrutiny in cases selected through Computer Aided Scrutiny Selection ('CASS')-reg .-

The Central Board of Direct Taxes ('CBDT'), vide Instruction No. 7/2014 dated 26.09.2014 had clarified the extent of enquiry in certain category of cases specified therein, which are selected for scrutiny through CASS. Further clarifications have been sought regarding the scope and applicability of the aforesaid Instruction to cases being scrutinized.

2. In order to facilitate the conduct of scrutiny assessments and to bring further clarity on some of the issues emerging from the aforesaid Instruction, following clarifications are being made.

i Year of applicability : As stated in the Instruction No. 7/2014 , the said Instruction is applicable only in respect of the cases selected for scrutiny through CASS-2014

ii Whether the said Instruction is applicable to all cases selected under CASS :

The said Instruction is applicable where the case is selected for scrutiny under CASS only on the parameter(s) of AIR/CIB/26AS data. If a case has been selected under CASS for any other reason(s)/parameter(s) besides the AIR/CIB/26AS data, then the said Instruction would not apply.

iii Scope of Enquiry : Specific issue based enquiry is to be conducted only in those scrutiny cases which have been selected on the parameter(s) of AIR/CIB/26AS data. In such cases, the Assessing Officer, shall also confine the Questionnaire only to the specific issues pertaining to AIR/CIB/26AS data. Wider scrutiny in these cases can only be conducted as per the guidelines and procedures stated in Instruction No. 7/2014.

iv Reason for selection: In cases under scrutiny for verification of AIR/CIB/26AS data, the Assessing Officer has to intimate the reason for selection of case for scrutiny to the assessee concerned.

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. The procedure indicated at points (a), (b) and (c) above shall no longer remain binding in such cases. (For the present purpose, 'Metrocharges' would mean Delhi, Mumbai, Chennai, Kolkata, Bengaluru, Hyderabad and Ahmedabad).

4. The Board further desires that in all cases under scrutiny, where the Assessing Officer proposes to make additions or disallowances, the assessee would be given a fair opportunity to explain his position on the proposed additions/disallowances in accordance with the principle of natural justice. In this regard, the Assessing Officer shall issue an appropriate show-cause notice duly indicating the reasons for the proposed additions/disallowances along with necessary evidences/reasons forming the basis of the same. Before passing the final order against the proposed additions/disallowances due consideration shall be given to the submissions made by the assessee in response to the show cause notice.

5. The contents of this Instruction should be immediately brought to the notice of all concerned for strict compliance.

6. Hindi version to follow."

6.2 We have also gone through the CBDT letter bearing No. DGITVIF/HQ SI/2017-18 dated 30.11.2017 which states that the idea behind such stipulation was to enforce checks and balances upon the power of the Assessing Officer to do fishing and roving enquiries in cases selected for limited scrutiny etc. In this very letter, the CBDT has also highlighted the aspect of cryptic order sheet entries which according to the CBDT shows irresponsible, ad hoc and indisciplined working of an Officer of the Department. A perusal of the aforesaid instructions would show that the objective behind the issuance of these instructions is (i) to prevent possibility of fishing and roving enquiries; (ii) ensure maximum objectivity; and (iii) to enforce checks and balances upon the powers of an Assessing Officer.

6.3 We have also gone through the proposal drafted by the Assessing Officer on 05.10.2017 for converting the case from limited scrutiny to complete scrutiny. This reads as under:

“....4. In this regard it may be mentioned here that the assessee has shown a short term capital loss on sale of shares purchased on 09.07.2014 and sold on 15.02.2015. The purchase price of the shares has been stated at Rs 499,98,440 and sale price has been mentioned at Rs 79,03,676. The resultant loss of Rs 420,94,764 has been set off by the assessee against long term capital gains. This transaction appears to be suspicious in nature and probably this loss has been created to reduce the incidence of tax on long term capital gains discussed in para 3. This issue needs to be thoroughly examined to ascertain the genuineness of this loss”

6.4 We have also gone through the original order sheet entries, as were present in the assessment records and which had been submitted for our perusal by the Ld. Sr. Departmental Representative under our directions and it shows that there is not an iota of any cogent material mentioned by the

Assessing Officer which enabled him to have reached the conclusion that this case was a fit case for conversion from limited scrutiny to complete scrutiny. We have also gone through the statement of assessee's Director Mr. Rohit Verma which was recorded on 18.07.2017 i.e., after the conversion of the case and even in his statement nothing adverse is coming out vis. a vis. the impugned transactions. If the proposal of the Assessing Officer dated 05.10.2017 and the approval of the Ld. Pr. Commissioner of Income Tax dated 10.10.2017 are examined on the anvil of paragraph 3 of CBDT Instruction No.5/2016, it is very much clear that no reasonable view is formed as mandated in the said CBDT Instruction No.5/2016 in an objective manner and secondly merely suspicion and inference is the foundation of the view of the Assessing Officer. We also note that there is no direct nexus brought on record by the Assessing Officer in the said proposal and, therefore, it is very much apparent that the proposal of converting the limited scrutiny to complete scrutiny aimed at making fishing enquiries. We also note that the Ld. Pr. Commissioner of Income Tax has accorded the approval in a mere mechanical manner which is in clear violation of the CBDT Instructions No.20/2015.

6.5 The Hon'ble Calcutta High Court in the case of Amal Kumar Ghosh reported in 361 ITR 458 (Cal.) discussed the purpose behind the CBDT Circulars. The relevant observations of the Hon'ble Calcutta High Court are as under:

“.....Mrs. Gutgutia, learned Advocate submitted that the circulars are not meant for the purpose of permitting the unscrupulous assessee from evading tax. Even assuming, that to be so, it cannot be said that the department, which is State, can be permitted to selectively apply the standards set by themselves for their own conduct. If this type of deviation is permitted, the consequences will be that floodgate of corruption will be opened which it is not desirable to encourage. When the department has set down a standard for itself, the department is bound by that standard and cannot act with discrimination. In case, it does that, the act of the department is bound to be struck down under Article 14 of the Constitution. In the facts of the case, it is not necessary for us to decide whether the intention of CBDT was to restrict the period of issuance of notice from the date of filing the return laid down under section 143(2) of the I.T. Act.”

6.6 The Co-ordinate bench of ITAT at Chandigarh in the case of Paya Kumari in ITA No.23/Chd/2011, vide order dated 24.02.2011, has held that even Section 292 BB of the Act cannot save the infirmity arising from infraction of CBDT Instructions dealing with the subject of scrutiny assessments where assessment has been framed in direct conflict with the guidelines issued by the CBDT.

6.7 Therefore, on an overall view of the factual matrix as well as settled judicial position, we are of the considered opinion that the instant

conversion of the case from limited scrutiny to complete scrutiny cannot be upheld as the same is found to be in total violation of CBDT Instructions No.5/2016. Accordingly, it is our considered opinion that the entire assessment proceedings do not have any feet to stand on. Therefore, we hold the assessment order to be nullity and we quash the same.”

11. Similarly, the Co-ordinate Bench of Chandigarh in the case of Shri Vijay Kumar (ITA No. 434/Chad/2019 for AY 2014-15 dated 12.09.20) wherein it has been held as under:

“3. The main contention of the Ld. Counsel for the assessee is that the Assessing Officer while making the impugned additions has exceeded his jurisdiction. That the case of the assessee was selected for limited scrutiny issue i.e. regarding security transaction. The Assessing Officer could not find any reason to make any addition in respect of issue for which the limited scrutiny was done. However, the Assessing officer made the certain other additions for which the Assessing Officer did not have any jurisdiction.

4. The Ld. D.R has been fair enough to admit that the impugned additions have been made by the Assessing Officer on certain other issues, whereas, the case of the assessee was selected for the purpose of limited scrutiny relating to security transactions.”

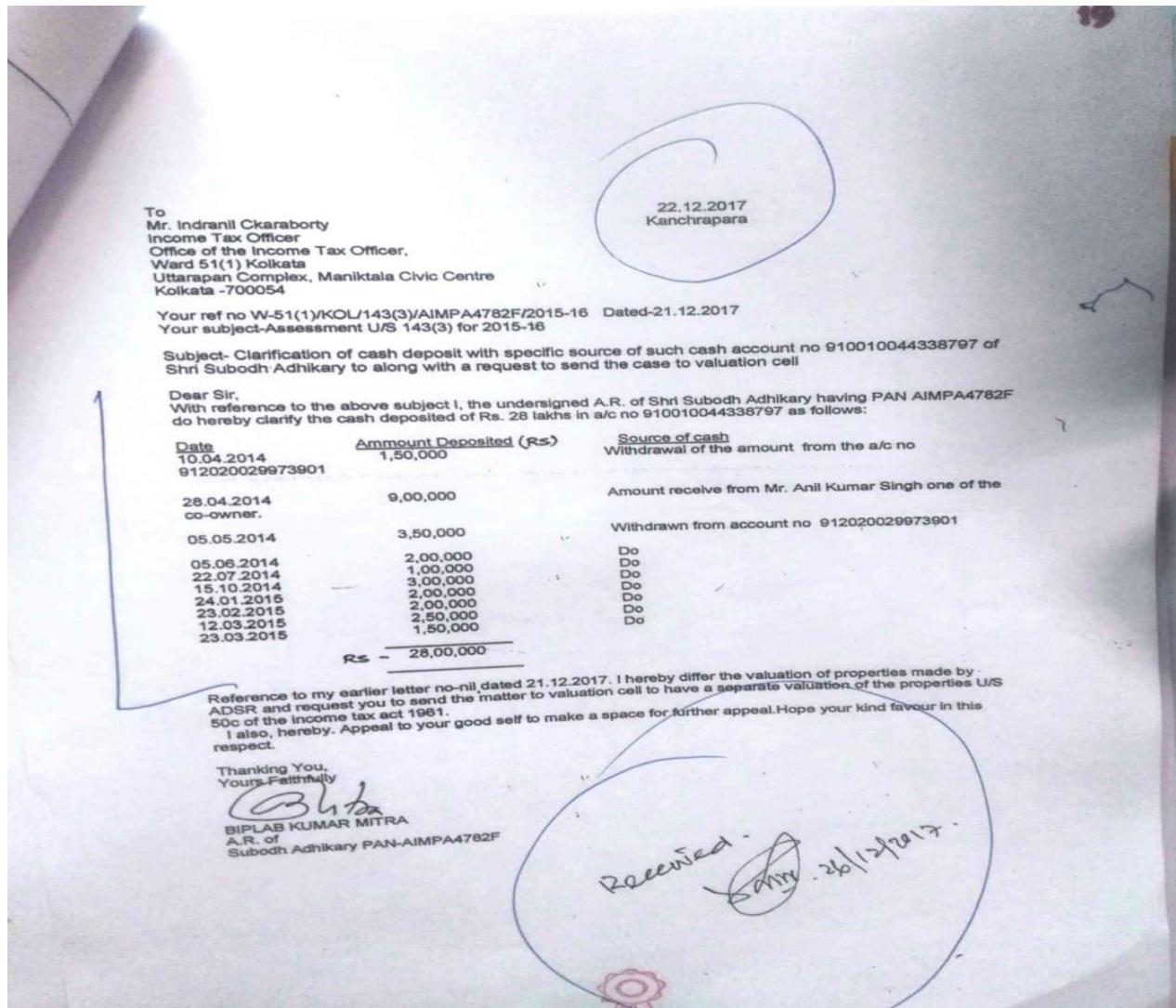
12. Considering the facts of the assessee's case and also the ratio laid down drawn in the above decisions and also the CBDT Instruction No. 5/2016, we are of the considered view that the AO has exceeded his jurisdiction in enquiring into those issues beyond the scope of limited scrutiny even prior to the date of conversion which is in clear violation of mandate given by CBDT in the said Circular and has been held by the Co-ordinate Bench of Delhi in the case of Dev Milk Foods Pvt. Ltd. (supra) to be bad in law. We note that CBDT has in para 4 of the said instruction clarified that in a limited scrutiny, the scrutiny assessment proceedings would initially be confined only to issues and questionnaire, enquiry, investigation etc. would be restricted to such issues in the limited scrutiny. Only upon conversion of such case to complete scrutiny after following the procedure laid down as stated, the AO may examine the issues other than the issues involved in the limited

scrutiny but in the present case the procedures were not followed and assessment was conducted in violation of this Instruction. Consequently, additions made of Rs. 2,26,77,110/- in respect of short-term capital gain of Rs. 1,10,12,228/- u/s 56(2)(vii)(b)(ii) of the Act and Rs. 2,84,88,544/- u/s 69A of the Act are without jurisdiction and accordingly ordered to be deleted. Consequently, the Ground Nos. 3 to 6 are allowed.

13. So far as the issue raised in Ground No. 7 is concerned challenging the order of Ld. CIT(A) upholding the addition of Rs. 28,00,000/- as made by the AO u/s 68 of the Act in respect of cash deposited into Bank A/c No. 7007945, the AO noted during the course of assessment proceedings that the assessee had deposited cash, the source of which had not been explained as the assessee had offered only salary income of Rs. 7,20,000/-. The AO noted that Rs. 28,00,000/- was found credited in the books of the assessee maintained for the impugned assessment year for which the assessee had not offered any explanation whereas the assessee is salaries and has not maintained any books. Accordingly, the same is treated as unexplained cash credit u/s 68 of the Act and added to the income of the assessee. In the appellate proceedings, the Ld. CIT(A) has dismissed the appeal of the assessee.

14. After hearing the rival contention and perusing the material on record, we find that the cash deposited in the Axis Bank was duly explained by the assessee vide letter dated 22.12.2017 which was furnished before the AO and acknowledged by the Revenue /department along with the copy of bank account No. 973901 with Axis Bank. These are available in the paper book at page no. 20 to 26. We note the assessee replied to the show cause notice dated 21.12.2017 vide letter dated 22.12.2017, which is available at page No. 110 to 119 and also acknowledged by the revenue. We note that the AO issued show cause notice dated 21.12.2017 which was replied on 21.12.2017 itself.

Therefore, all these documents in the form of replies/ explanations along with bank statement were before the AO as well as the Ld. CIT(A) and they have failed to appreciate the facts correctly. For the sake of ready reference, the reply to the show cause notice dated 21.12.2017 is extracted below.



15. The perusal of the above reply along with bank statement furnished by the assessee adequately proved the sources for Rs. 28,00,000/-. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to delete the addition. Ground No. 7 is allowed.

16. In result, appeal of the assessee is allowed.

Order pronounced on 07.01.2026

Sd/-
(Pradip Kumar Choubey)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Dated: 07.01.2026

AK, Sr. P.S.

Copy of the order forwarded to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches