

आयकर अपीलिय अधीकरण, न्यायपीठ – “A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “A” KOLKATA

Before **Shri J.Sudhakar Reddy, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.906/Kol/2015
Assessment Year:2010-11

M/s Brothers & Sisters Enterprise, Simultala Colony, 52, 1, No. Mohishila Colony, Asansol, Pin-713303 [PAN No.AAFFB 9379 N]	बनाम/ V/s.	JCIT, Range-1, Asansol-713304
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri U. Dasgupta, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri D.C. Mondal, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	28-06-2017
घोषणा की तारीख/Date of Pronouncement	08-09-2017

आदेश /O R D E R

PER J. Sudhakar Reddy, Accountant Member:-

This is an appeal filed by the assessee directed against the order of Commissioner of Income Tax (Appeals), Asansol dated 14.05.2015 for the assessment year 2010-11 on the following grounds:-

“1. For that on the facts of the case the Ld. CIT(A) was not justified in sustaining the assessment order passed u/s. 143(3) dated 31.12.2012, when the same has been passed in contravention of the Board instruction F. No.225/127/2011/ITA-II dated 02.09.2011 and as such the same may please be deleted.

2. For that the case has been selected for scrutiny manually, without recording any reasons in the file of the assessee as per prevailing CBDT instruction on

manual selection and as such the order passed u/s 143(3) is not legal and the same may please be quashed.

3. For that the Ld. CIT(A) was not justified in refusing to give cognizance to the written arguments filed by the appellant in course of hearing, and the case selected and approved by the CIT, in contravention of the CBDT instruction is void, and may please be quashed.

4. For that the appellant craves leave to add, alter, amend and further grounds of appeal before or at the time of hearing.”

2. The argument of the assessee in this case is that the selection for scrutiny of this case manually done by the Assessing Officer is bad in law and that the Commissioner of Income Tax has granted approval for selection of this case for scrutiny by the AO without application of mind. Ld. Counsel for the assessee filed a paper book running 1 to 23 pages. The sum and substance of the case is that Ld. CIT has granted approval without application of mind and in contravention of the guidelines laid down by the Central Board of Direct Taxes for picking of case of tax scrutiny for Assessment Year 2010-11. Certain cases have been relied upon and we would deal with them as and when required in the later part of the order.

3. Ld. Departmental Represented, on the other hand, relied upon the order of Ld. CIT and submitted that the guidelines in question for selecting cases for scrutiny are Internal Administrative's instruction for the purpose of smooth functioning of the Department and these guidelines cannot be read and interpreted as if it is the Income Tax Act or Rules. He prayed that order of Ld. CIT be upheld.

4. No other argument has been advanced before us by the Ld. counsel for the assessee.

5. This case has been selected for scrutiny by the Assessing Officer. This case is one of the 25 cases that were selected for scrutiny manually. The AO sought the Ld. CIT's for approval for this manual selection. Ld. CIT vide his order dated 26.09.2011 granted approval for selection of 24 cases for scrutiny by the Assessing Officer. Approval was denied in one case only. The assessee has at page 5 of its paper book enclosed a photo copy of reasons recorded by the Assessing Officer in his proposal for selection of the assessee's case for scrutiny for the AY 2010-11. This reads as follows:-

“net profit appears to be low which needs verification with regard to the expenses claimed by the assessee insured loan of ₹79,07,960 and sundry creditors for ₹3,255/- are to be verified.”

In our view, no fault can be found in the reasons recorded by the Assessing Officer for selecting the assessee's case for scrutiny. At page 15 & 16 of the paper book, the assessee enclosed copy of the criteria / guidelines for income tax scrutiny for AY 2010-11 dated 10.09.2011. The relevant portion of the Circular restricted for the reference:-

“Criteria / Guidelines for Income tax Scrutiny for A.Y 2010-11/ F.Y. 20009-10 Republished on 10th September 2011, Earlier Published on 14th August 2010 Guidelines for selection of cases for Scrutiny During 2010-11

- 1. Selection of cases for scrutiny during the financial year 2010-11 will be done primarily through CASS this year. Manual Selection for scrutiny this year will be limited only to a few cases listed below.*
- 2. List of cases selected during each month in accordance with selection criteria mentioned below shall be submitted by the Assessing Officers to their respective Range heads by the 15th of the following month and also displayed on the notice Board of their offices.*
- 3. These guidelines are meant only for the use of offices of the Income Tax Department. These are not to be disclosed even if a request is made under Right to Information Act. In view of the decision of the Central Information Commission in the case of Shri Kamal Vs Director (ITA-II) CBDT (order no.CIC/AT/2007/00617 dated 21.02.2008)*

Selection criteria Applicable to all return at all stations

 - a) Value of International transaction as defined in 92B exceeds 15 Crore.*
 - b) Cases involving addition in an earlier assessment year in excess of Rs.10 lacs on a substantial and recurring question of law or fact which is confirmed in appeal or is pending before on appellate authority.*
 - c) Cases involving addition in an earlier assessment year on the issue of transfer pricing in excess of Rs.10 lakh or more.*
 - d) Assessment in survey cases for the financial year in which survey was carried out. This criteria will not apply if all of the following conditions are fulfilled:*
 - i. There are no impounded books of documents.*
 - ii. There is no retraction of disclosure, if any, made during the survey.*
 - iii. Declared income excluding any disclosure made during the survey, is not less than the declared income of the preceding year.*
 - e) Assessment in search & Seizure cases to be made under section 158B, 158BC, 158BD, 153A, 153C & 143(3) of the IT Act.*
 - f) Assessment Initiated under section 147/148 of the IT Act.*

g) Assessing officer may select any return for scrutiny after recording the reason and obtaining approval of the CCIT/DGIT. The cases under this category should be selected if, there are compelling reasons and the case selected through CASS. These cases should be watched by CCIT/CIT in respect of the quality of assessment.

These guidelines authorize the Assessing Officer to select any return for scrutiny after recording the reasons and obtaining approval of the CCIT/CIT. The case under the category should be selected if, they are compelling the reasons and the case selected through CASS. These cases should be watched by CCIT / CIT in respect of the quality of assessment.

In our view, the requirements of the guidelines have been met by the AO in this case. The term compelling reasons is a relative term and has to be viewed from the point of view of the AO.

6. Coming to the approval granted by Ld. CIT, the application of mind is evident from the fact that the proposal of the Assessing Officer to select the case of Suparna Bose at Sl. No. (25) has not been approved by the Ld. CIT. The Circular does not require recording reasons for giving approval. In any event, these are internal guidelines issued for effective functioning of the Department. The requirement of obtaining approval of CIT/CCIT, as required in this Departmental communication cannot be equated with the requirements specified under the statute in Section 151(1) of the Act. Section 151(1) and 151(2) of the Act require the Commissioner of Income Tax to record satisfaction, as compared to, mere approval in the case of Board's circular.

7. The reliance placed by the assessee on the decision of Kolkata "B" Bench of this Tribunal in the case of *Ajanta Financial Services Pvt. Ltd. vs. ITO* in **ITA No. 1426/Kol/2011** dated 21.05.2012 for the AY 2003-04 is not applicable as in that case, the criteria laid down for selection of case for scrutiny was not valid. Nowhere in this decision, it has been laid down that the Ld. CIT(A) while granting approval has to give details reasons. Similarly, the judgment in the case of *Kirtilal Kalidas & Co. vs. DCIT* (11998) 67 ITD 573 (Mad) does not applying to the facts of the case as it was a case of grant of approval by the CIT of ADIT before passing of an assessment order in terms of u/s 158BD of the Act. When the CIT is satisfied with the reasons given by

the Assessing Officer, he in not once again give separate reasons or repeat the reasons recorded by the Assessing Officer and then give his approval for the same.

8. In the case of *ITO vs. M/s Direct Sales (P) Ltd.* in ITA No.3545/Del/2010 dated 25.02.2015 for the A.Y. 2002-03, the issue that was considered was satisfaction to be recorded u/s 151 of the Act and not mere grant of approval. Similarly, the Hon'ble Delhi High Court in the case of *United Electrical Co. (P) Ltd. vs. CIT & Ors.* 258 ITR 317 (Del) was considering the powers vested with Commissioner u/s. 151 of the Act. These case law cannot be applied to the issue on hand.

9. In view of above discussion, we reject these grounds of the assessee and hold that selection of assessee's case for scrutiny is in accordance with law.

10. As already mentioned, no other ground has been argued before us by the Ld. AR.

10. **In the result, assessee's appeal is dismissed.**

Order pronounced in open court on 08/09/2017

Sd/-

(न्यायिक सदस्य)

(S.S.Viswanethra Ravi)

Judicial Member

*Dkp-Sr.PS

दिनांक:- 08/09/2017

कोलकाता / Kolkata

Sd/-

(लेखा सदस्य)

(J.Sudhakar Reddy)

Accountant Member

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

1. अपीलार्थी/Appellant-M/s Brothers & Sisters Enterprise, Simultala Colony, 52, 1 No. Mohishila Colony, Asansol, Pin 713303
2. प्रत्यर्थी/Respondent-JCIT, Range-1, Asansol, ITO Ward-1(2), Sahana Building, Chelidanga, Asansol-713304
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary,
Head of Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता