

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'B', NEW DELHI**

**BEFORE  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.6767/Del/2019  
(ASSESSMENT YEAR-2015-16)**

Dev Milk Foods Pvt. Ltd. C/o Kapil Goel Advocate, F-26/124, Sector-7, Rohini, Delhi-110085. PAN -AACCD 2586M <b>(Appellant)</b>	Vs.	Add. CIT, Special Range -3 New Delhi. <b>(Respondent)</b>
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Appellant By	<b>Sh. Kapil Goel, Adv.</b>
Respondent by	<b>Sh. S.N.Meena, Sr.DR</b>

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER:**

This appeal is preferred by the assessee against order dated 18.06.2019 passed by the Ld. Commissioner of Income Tax (Appeals)-34, New Delhi {CIT(A)} for Assessment Year 2015-16.

2.0 The brief facts of the case are that the assessee company is engaged in manufacturing, marketing and transportation of milk and dairy products. As per the records, during the year under consideration, the main source of income was freight income and long term capital gains.

The return of income was filed declaring a total income of

Rs.19,44,88,700/-. The case was selected for limited scrutiny through CASS.

2.1 In the assessment order, the Assessing Officer noted that the assessee's case was selected for limited scrutiny with respect to long term capital gains but it was noticed that the assessee had claimed a short term capital loss of Rs.4,20,94,764/- which had been adjusted against long term capital gains. As per the Assessing Officer, the loss claimed by the assessee appeared to be suspicious in nature primarily due to the reason that the loss could possibly have been created to reduce the incidence of tax on Long Term Capital Gains shown by the assessee. The Assessing Officer further stated in the assessment order that in order to verify this aspect, approval of the Ld. Principal Commissioner of Income Tax (PCIT) was taken to convert the case from limited scrutiny to complete scrutiny and that the assessee was also intimated about the change in status of the case. As noted in the assessment order, the statement of Shri Rohit Verma, Director of the company was recorded u/s 131 of the Act on 27.11.2017 wherein Shri Rohit Verma is said to have stated that the assessee company had purchased shares from four brokers namely M/s Rochak Vinimay Pvt. Ltd., Ekaparnik Vintrade Pvt. Ltd, Rochi Dealcom

Pvt. Ltd. & Duari Marketing Pvt. Ltd. As per the Assessing Officer, since all these brokers were Kolkata based and since there was detailed investigation by the Investigation Wing of the Income Tax Department in cases of entry operators/shares brokers and since the assessee company had purchased shares from the brokers under investigation and the shares pertained to companies under investigation, a further questionnaire was issued to the assessee in which assessee was confronted on the issue on non-genuine capital loss. The assessee responded to the questionnaire and, thereafter, further queries were again raised by issuing another questionnaire which was also responded to by the assessee. The assessee requested the AO to be given an opportunity to cross-examine those persons on whose statements the AO was proposing to rely and conclude that the short term capital loss was not genuine. However, the AO noted that such an opportunity was not to be given.

2.2 The Assessing Officer went on to hold that the purchase of shares did not take place and the transactions were sham in view of documentary evidences, circumstantial evidences, human conduct and preponderance of probabilities. The Assessing Officer observed that the entire exercise was a device to avoid tax. The Assessing Officer (AO)

completed the assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter called as the 'Act') after making an addition of Rs.4,20,94,764/- on account of disallowance of short term capital loss, Rs.8,41,895/- for alleged unexplained expenditure on commission and Rs.1,93,20,000/- on account difference in computation of long term capital gains. Thus, the total income was computed at Rs.25,67,43,360/- by the Assessing Officer.

2.3 Aggrieved, the assessee approached the Ld. First Appellate Authority. The Ld. CIT (A) was of the opinion that the evidences furnished by the assessee with respect to the short term capital loss of Rs.4,20,94,764/- could not be accepted as genuine as it had been established by the Investigation Wing of the Department, after making detailed enquiries, that the brokers through whom the assessee had purchased shares were involved in business of providing accommodation entries and that the shares purchased by the assessee were in the nature of penny stock. The Ld. CIT (A) also held that the Assessing Officer was right in denying the assessee's request for cross examination of those persons on whose statements Department had relied upon in this respect. Thus, the allowance of short term capital gains of Rs.4,20,94,764/- was

upheld along with the addition of Rs.8,41,895/- made on account of alleged unexplained commission expenditure. However, the Ld. CIT (A) deleted the addition of Rs.1,93,20,000/- on account of long term capital gains as the same was based on incorrect computation.

2.4 Now, the assessee has approached this Tribunal challenging the order of the Ld. CIT (A) and has raised the following grounds of appeal:

*“1. That order passed by Ld AO dated 30/12/2017 and further order passed by Ld GIT A dated 18/06/2019 are bad in law in as much as mechanical notice u/s 143(2) on basis of CASS is not in accordance with jurisdictional conditions stipulated under the Act so it shows grave and patent non application of mind on part of Ld AO in issuing notice u/s 143(2) and accordingly all subsequent proceeding including orders passed by Ld AO and Ld CIT-A are void ab initio.*

*2. That order passed by Ld AO dated 30/12/2017 and further order passed by Ld CIT A dated 18/06/2019 are bad in law in as much as admitted from para 3 of assessment order that case was primarily selected for limited scrutiny only on limited issue of Long term capital gains (LTCG) on which aspect as per Ld, CIT-A order there remains no existing addition and conversion of limited scrutiny to complete scrutiny on mere suspicion only and for verification only, on basis of invalid approval of PCIT-3, entire addition on a/c disallowance, of short term capital loss of Rs 420,94,764 & Rs*

8,41,895 as alleged unexplained commission expense is not as per CBDT instructions (refer instruction no 19&20/2015 of 29/12/2015) on the subject and ergo ultra vires to provisions of the Act.

*Other grounds on merits-*

*Qua disallowance of short term capital loss (STCL) of Rs.420,94,764/- & addition for Rs 8,41,895 as alleged unexplained commission expense (Rs 42936,659)*

3. *That order passed by Ld AO dated 30/12/2017 and further order passed by Ld CIT A dated 18/06/2019 are bad in law in as much as disallowance of Rs 42936,659/- (break up: disallowance on a/c of short term capital loss on share sale of Rs 420,94,764/- & Rs.8,41,895/-*

*as alleged unexplained commission expense) is made in most perfunctory and light hearted manner which is highlighted elaborately in next ground by outlining striking features of extant case.*

4. *That order passed by Ld AO dated 30/12/2017 and further order passed by Ld CIT A dated 18/06/2019 are bad in law in as much as addition of Rs.42936,659/- (break up : disallowance on a/c of short term capital loss on share sale of Rs.420,94,764/-) is made without appreciating that:*

i) Firstly, no where it is brought on records by reference to any particular material that cash has been received back by assessee from concerned parties after making purchases and similarly there is no evidence to prove that assessee has passed on cash to concerned parties after receiving the sale proceeds of shares in its bank account through proper banking channels,

ii) Secondly no where assessee's audited books a/s 145 are doubted and so loss emerging there from can. also not be subject matter of doubt/debate

iii) thirdly principle that "The commercial expediency of the contract is to be adjudged by the contracting parties as to its terms": which directly answers the basis taken by Ld AO/CIT-A in drawing adverse inference

iv) fourthly neither there is any collusion being established on records by any cogent material nor it is the case of Ld AO/CIT-A that transaction done are at variance with price on given date on stock exchange

(v) fifthly case set up by Ld AO/CIT-A to disallow stated loss on ground of probability, suspicion, would fall the fowl of test of live nexus where there is no live nexus between

*inference of accommodation entry and disallowance loss vis a vis sale/purchase of shares*

*vi) sixthly no material worth name in form of statement implicating assessee or its transaction in question has been confronted/cross examined to assessee in manner known to law except general allegations being made*

*vii) lastly no case specific and transaction specific material is brought on records to dislodge evidence of genuine share sale loss claim of assessee.*

*In view of above we pray for outright disallowance of loss as made by Ld AO and as mechanically sustained by Ld CIT-A where Ld CIT-A has just mechanically applied general sermons without giving any specific finding on our assail lodged before him.*

5. *That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the action of Ld AO in making loss disallowance of Rs.42936.659/- without appreciating that burden to prove that transaction is bogus/sham has remained, un-discharged from side of revenue.*

6. *That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the action of Ld AO in making addition of Rs 42936,659/- without appreciating that basis of*



*findings of the lower authorities is “suspicion ” and “human probabilities” only which is never converted to reliable and trustworthy material and entire assessment order is passed on sole basis of “borrowed satisfaction” and without any independent application of mind (like a rubber stamp order).*

7. *That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the action of Id AO in making addition of Rs 42936359/- without appreciating that no opportunity is given to the assessee to be confronted with back material relied extensively in impugned orders like investigation wing report etc and no opportunity to cross examine the revenue’s witness was given despite specific written request in this regard made to Ld AO/CIT-A.*

8. *That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the action of Ld AO in making addition of Rs.429.36,659/- without appreciating that in identical facts in various orders relief has been granted to assesses accepting loss claimed as genuine.*

9. *That the appellant craves leave to add/alter any/all grounds of appeal before or at the time of hearing of the appeal.*

*Humble Prayer:*

i) *To delete the addition of Rs 42936,659/- on a/e of alleged bogus loss resulting from, innocuous share sale*

- ii) *To quash assessment order and Ld CIT-A order for being passed in serious violation of audi altrem partem*
- iii) *To quash the assessment order and Ld CIJ-A order for being passed in serious violation of CBDT instructions on aspect of limited scrutiny issue*
- iv) *To restore returned income*
- v) *Any other appropriate relief”*

3.0 The Ld. Authorized Representative submitted that he may be given the opportunity to first argue ground Nos.1 & 2 which were legal grounds challenging the validity of notice issued u/s 143(2) of the Act and that if the Bench is satisfied with the arguments on these two grounds and hold them in favour of the assessee, then the other grounds would become academic in nature. The Ld. Sr. Departmental Representative agreed to the proposal of the Ld. Authorized Representative. Therefore, we are proceeding to hear both the parties initially on ground Nos.1 & 2.

4.0 The Ld. Authorized Representative submitted that the assessment order passed by the Assessing Officer was bad in law because, admittedly, the case was selected for limited scrutiny on the limited issue of long term capital gains and it was converted to a complete scrutiny only on a mere suspicion and for the purposes of verification only on the basis

of an invalid approval by the Ld. Pr. Commissioner of Income Tax. It was submitted that the conversion from limited scrutiny to complete scrutiny in the instant case was not as per the instructions issued by the CBDT viz. Instruction No.19 & 20/2015 dated 29.12.2015 and, therefore, the entire assessment was void *ab initio*. The Ld. Authorized Representative vehemently argued that the conversion from limited scrutiny to complete scrutiny was itself bad in law. The Ld. Authorized Representative drew our attention to the notice issued by the Department dated 11.04.2016 for limited scrutiny and also letter dated 17.10.2017 issued by the Department informing the assessee of converting the limited scrutiny into complete scrutiny. The Ld. Authorized Representative also drew our attention to the computation of income by the assessee and submitted that it was evident from the computation that nowhere was the details of the loss incurred in shares disclosed company-wise. It was submitted that the details of the companies in which the assessee had incurred loss in the shares transaction was communicated only by the assessee at the time of the assessment proceedings and also in the statement recorded by the Assessing Officer of the assessee company's Director. The Ld. Authorized Representative submitted that, thus, it was very much

apparent that the Department had converted the limited scrutiny into complete scrutiny only for making roving enquiries and that the Department did not have a reasonable view as mandated in CBDT Instruction No.5/2016 dated 14.07.2016 and, thus, there was inherent weakness and deficiency in the action to convert the limited scrutiny into full scrutiny.

4.1 It was also pointed out that the, admittedly, there was no adverse inference with respect to long term capital gains as the entire long term capital gains had been offered to tax. The Ld. Authorized Representative drew our attention to the aforesaid CBDT Instruction wherein it has been stated that while forming the reasonable view, the Assessing Officer has to ensure that there existed credible material or information available on record for forming such view and that the reasonable view should not be based on mere suspicion or conjecture and that there must be a direct nexus between available material and formation of such view. The Ld. Authorized Representative submitted that in the present case there was no direct nexus demonstrated between the material available and the formation of such view as no such material is stated in the proposal itself. He drew our attention to the proposal wherein

it has been stated that there is a possibility of under assessment of income if the case is not examined under complete scrutiny.

4.2 The Ld. Authorized Representative argued that the proposal and the approval both were completely non-descriptive as even the basic details required for forming a reasonable view were completely missing. The Ld. Authorized Representative placed reliance on numerous judicial precedents wherein it had been held that the violation of CBDT Instruction governing the scrutiny u/s 143(2) of the Act would lead to the invalidation of the entire assessment.

4.3 The Ld. Authorized Representative also submitted that the impugned addition had been made only by making some reference of the report of the Investigation Wing which the assessee was not confronted with and further the assessee's prayer for granting opportunity for cross examining those persons on whose statements the Department had relied upon was also denied. It was argued that it was apparent that the *de hors* the material relied upon by the Department, the addition had no feet to stand. In this regard also, the Ld. Authorized Representative placed reliance on numerous judicial precedents and submitted that where there was no material available with the Department except the so called

investigation report, the Department cannot be allowed to improve upon the reasoning of the Assessing Officer and the Ld CIT (A) .

4.4 The Ld. Authorized Representative also submitted that there was an inordinate delay in getting the case converted to complete scrutiny which was evident from the fact that information dated August, 2015 of the Investigation Wing is purportedly made the basis of conversion of the case from limited scrutiny to complete scrutiny in October, 2017 whereas the case was selected for scrutiny in April, 2016. Therefore, it was apparent that this conversion was not within the spirit and meaning of CBDT Instructions No.20/2015 & 5/2016.

5.0 In response the, Ld. SR. DR submitted that the Department had followed the CBDT Instructions in letter in spirit while converting this case from limited scrutiny to complete scrutiny. The Ld. Sr. DR, while referring to the contents of the proposal dated 05.10.2017 and approval dated 10.10.2017, submitted that there was nothing wrong with them and that they satisfied the conditions laid down in the CBDT instructions. The Ld. SR. Departmental Representative also defended the action of the Lower Authorities in not allowing cross examination of the persons whose statements had been relied upon and placed reliance on

certain judicial precedents for the same. The Ld. SR. Departmental Representative submitted that quasi judicial adjudications do not require any opportunity to provide cross examination or opportunity to lead evidence. The Ld. SR. Department Representative also argued that Investigation Wing is a part of the Department itself and not a third party and, therefore, the Assessing Officer was completely justified in relying on the report of the Investigation Wing while converting the case of limited scrutiny to complete scrutiny. The Ld. SR. Department Representative argued that the case of the assessee should not be decided on the legal ground and the merits of the case also should also be considered.

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 complete 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 29 th 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 al l 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 assessee 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 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, 'Metro charges' 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. DGIT VIF/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 these 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 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 was merely 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 assesseees 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.

6.8 Since, we have quashed the assessment order as being nullity, the other grounds raised by the assessee became academic in nature and are not being addressed to.

7.0 In the final result, the appeal of the assessee stands allowed.

**Order pronounced on 12/06/2020.**

Sd/-  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Dated: 12/06/2020

*PK/Ps*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI