

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI

**BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER**  
**A N D**  
**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**  
**(Through Video Conferencing)**

ITA No. 2780/Del/2019  
(Assessment Year: 2014-15)

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| M/s. Spooner Industries P Ltd,<br>Khasara No. 351-53,<br>Village Kandola, Tehsil<br>Dhoulane, Hapur, Uttar Pradesh.<br><b>PAN : AAPCS8921G</b> | Vs. | ITO,<br>Ward-3(5),<br>Hapur |
| (Appellant)  |     | (Respondent)                |

|                       |   |
|-----------------------|---|
| Assessee by :         | Shri R. S. Singhvi, CA;<br>Shri Satyjeet Goel, CA; &<br>Shri Prateek Gupta, CA. |
| Revenue by:           | Ms. Aman Preet, Sr. DR  |
| Date of Hearing       | 03/11/2020  |
| Date of pronouncement | 28/12/2020  |

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

1. This appeal is filed by the assessee against the order of the Id. CIT(Appeals), Muzaffarnagar, dated 26.12.2018 for the Assessment Year 2014-15 raising the following grounds of appeal:-

- “1. *On the facts and circumstances of the case the order passed by the Ld. CIT(A) is bad both in eyes of law and on facts.*
2. *On the facts on circumstances of the case the Ld. CIT(A) erred in law and on facts in upholding the action of Ld. AO in framing the assessment which is contrary to Instruction No. 5/2016 dated 14.07.2016 i.e. the case of the assessee was selected for Limited Scrutiny and later on converted to Full Scrutiny without according an opportunity to the assessee and therefore in violation of principle of natural justice.*
3. *On the facts on circumstances of the case the Ld. CIT(A) erred in law and on facts in upholding the action of Ld. AO in framing the assessment which is contrary to Instruction No. 20/2015 dated*

29.12.2015 i.e. assessee was asked to furnish the information's which were out of the purview of limited scrutiny guidelines.

4. *On the facts and circumstances of the case the Ld. CIT(A) erred in law and on facts in upholding the action of Ld. AO in making additions on account of security premium received on fresh issue of shares u/s. 56(2)(vii-b) of the Act.*
  5. *On the facts and circumstances of the case the Ld. CIT(A) erred in law and on facts in not accepting the valuation report which was a crucial evidences as submitted during the appellate proceeding as additional evidences which was in accordance with Rule 11U and Rule 11UA of the Rules and hence defeating the principles of natural justice.*
  6. *On the facts and circumstances of the case the Ld. CIT(A) erred in law and on facts in upholding the action of Ld. AO in making additions on account of unsecured loan received from Shri Nitin Bansal amounting to Rs. 14,51,000/- even when the supporting documents were submitted which proves the genuineness, creditworthiness and identity for the transaction.*
  7. *On the facts and circumstances of the case the Ld. CIT(A) erred in law and on facts in upholding the action of Ld. AO in making additions on account of unsecured loan amounting to Rs. 8,40,000/- received from Smt. Alpana Saxena stating that the documents submitted did not correlate with each other however the Ld. AO during the assessment proceedings did not raise any doubts regarding the veracity of the documents.*
  8. *On the facts and circumstance of the case the Ld. CIT(A) erred in law and on facts in upholding the action of Ld. AO in making the additions on account of unsecured loan amounting to Rs. 42,00,000/- received from Shri. Himanshu Mittal failing to appreciate the fact that the amount so received was out of the current account maintained by Shri Himanshu Mittal in the name of his proprietorship Firm "M/s. Ganesh Trading Company".*
  9. *On the facts and circumstances of the case the Ld. CIT(A) erred in law and on facts in not accepting additional evidences submitted as per the Rule 46A of the Rules with respect to unsecured loans received from Smt. Uma Bansal, Smt. Anupam Kumari Jha and Shri Sharad Kumar Raizada which were crucial evidences and hence defeating principles of natural justice.*
  10. *That on facts and circumstances of the case the Ld. CIT(A) has erred in law in not admitting the crucial evidences in accordance with Rule 46 A and omitting to adjudicate on the contention and claim of the assessee company.*
  11. *That the order of the Ld. CIT(A) is arbitrary, unwarranted, without any merit and is bad in law, the same should be quashed and the assessee company be given such relief as prayed for."*
2. Brief facts of the case shows that assessee is a company engaged in the business of manufacturing of Gluco products. Till 31<sup>st</sup> of March, 2014 the

manufacturing operations of the company have not yet started. For the year assessee filed its return of income on 30<sup>th</sup> September, 2014 declaring loss of Rs.6,59,442/-. The case of the assessee was selected for **limited scrutiny** under CASS for verification of **large share premium received** during the year under consideration. However, subsequently the ld. Assessing Officer sought approval for converting the case into complete scrutiny since some other issues have also been noticed during the assessment proceedings. The ld. AO has stated in para No. 1 that, therefore, approval from ld. Pr. Commissioner of Income Tax has been sought for complete scrutiny communicated vides order dated 21<sup>st</sup> December, 2016. On next day, i.e. on 22/12/2016 he passed assessment order u/s 143 (3) of the act by making the following additions:-

- (i) Addition on account of share premium of Rs.34,05,000/-;
- (ii) Addition on account of un-secured loan from Shri Nitin Bansal of Rs.14,51,000/-;
- (iii) Loan from Ms. Alpna Saxena Rs.8,40,000/-;
- (iv) Loans from Shri Himanshu Mittal Rs.42,00,000/-;
- (v) Loans from others of Rs.39,94,120/-.

Thus, the assessment order was passed determining total income of the assessee at Rs.1,32,30,678/-. The assessee on appeal before the ld. CIT (Appeals) remained unsuccessful and appeal of the assessee was dismissed. Therefore, assessee is in appeal before us.

3. Ground No. 1 of the appeal is general in nature, therefore, same is dismissed.
4. Ground No. 2 of the appeal is challenging the action of the AO in violation of instruction No. 5 of 2016 dated 14.07.2016. Ground No. 3 is with relation to action of the AO contrary to instruction No. 20/2015 dated 26.12.2015.
5. We have heard the Counsel and the ld. Sr. Departmental Representative on this issue. The facts clearly show that originally the case of the assessee was selected for limited scrutiny for verification of large sale premium received by the assessee. The AO got approval to convert the limited

scrutiny case into complete scrutiny on 21<sup>st</sup> of December, 2016. On the very next day i.e. on 22.12.2016 the ld. AO passed order under Section The 143(3) of the Income Tax Act, 1961 (the Act) wherein he has made the addition of Rs.1,04,85,120/- which was not at all part of the limited scrutiny criteria. The Central Board of Direct Taxes has issued instruction No. 20 of 2015 dated 29<sup>th</sup> December, 2015 clearly shows that as per para No. 3 when the returns are selected through CASS the assessee is required to be informed whether the case of the assessee is under limited scrutiny or complete scrutiny. In case of limited scrutiny the reasons are to be given to the assessee. In para No. 3(d) it is mentioned that during the course of assessment proceedings in limited scrutiny case if it comes to the notice of the Assessing Officer that there is a potential escapement of income exceeding Rs. 5,00,000/- requiring substantial verification on any other issues, then the case may be taken up for complete scrutiny with the prior approval of Pr. Commissioner of Income Tax / CIT concerned. Such approval shall be granted in writing. In this case such approval has been received on 21<sup>st</sup> December, 2016 and assessment order is passed on 22<sup>nd</sup> December, 2016. It is very pertinent to note an issue which clinches the issue in favour of the assessee , In the remand report before the ld CIT (A) which is reproduced at page no 22 to 24 of appellate order at page no 23 is it stated by the ld AO that :-

**“On 9/1/2016, request letter to PR CIT GZB through proper channel for approval of complete scrutiny sent along with draft assessment order.”**

Admittedly approval was granted on 21/12/2016 and assessment order was passed on 22/12/2016. Instruction No. 5/2016 dated 14<sup>th</sup> July, 2016 clearly states that in para No. 4 only on conversion of case to complete scrutiny, the AO may examine the issues besides the issues involved in limited scrutiny. The AO is also required to intimate the taxpayer regarding conducting the complete scrutiny in his case. In para No. 5 it was further clarified that once a case has been converted into complete scrutiny, the Assessing Officer can deal with any issue emerging from the scrutiny proceedings. In the present case the notice is shown to us at page Nos. 1, 2 & 3 of the paper book that the ld. AO on 5.07.2016 asked assessee to

appear and therein in para No. 9 asked for the borrowings and its details despite the issue not being in limited scrutiny. Further in para No. 4 of instruction dated 29<sup>th</sup> of December, 2015 it has been specifically stated that where the AO proposed to make any addition he shall issue an appropriate show cause notice for the reasons of addition. It is stated by the Id AO that he sent the draft assessment order itself for approval of limited scrutiny case to complete scrutiny case. Surprisingly, Even the Pr CIT also granted approval. Had the Pr. CIT applied his mind on the case, looking at the draft assessment order itself, the approval should have been refused, as it is clear violation of the instructions of CBDT. But unfortunately, in this case approval was granted. In the present case, the day on which case was converted into full scrutiny i.e. on 21.12.2016 the Id. AO on the very next day passed the order of assessment by making the addition which were beyond the scope of limited scrutiny. Further looking at the notices dated 3.05.2016 under Section 142(1) of the Act; notice dated 26.06.2016 u/s 142(1); notice dated 21.07.2016 u/s 142(1) and further notice dated 15.09.2016 u/s 142(1), it is apparent that AO started making roving enquiries on the issue which was not the subject matter of limited scrutiny. He even framed draft assessment order and then sought approval of Pr CIT for conversion in to Full scrutiny from Limited scrutiny. Non-adherence to CBDT instruction which are binding on the AO makes the order of the Id. AO illegal and without jurisdiction as held by the Hon'ble Supreme Court in 343 ITR 270 and further Hon'ble Delhi High Court in 295 ITR 256. Further the co-ordinate bench in the case of Smt. Manju Kaushik Vs. DCIT in ITA. No. 1419 (Jp) of 2019 dated 9.12.2019 it was held that AO is precluded from enhancing the scope of limited scrutiny in anticipation of approval and, therefore, the assessment was held to be bad in law. The Assessing Officer is duty bound to follow the instructions issued by the CBDT. Therefore, the CBDT circulars not followed by the Id. AO are not acceptable for making the addition which are in violation of that circular. In Batra Finance Services Vs. ITO in ITA. No. 2023 (Del) of 2019 dated 2.03.2020 the assessment order passed beyond the issue of limited scrutiny was also quashed. However, in the present case only the additions of unsecured loan from the Directors and their relatives were not covered in the limited

scrutiny aspect. Therefore, the addition of Rs.14,51,000/-, Rs.8,40,000/- and Rs.42,00,000/- as well as loan of Rs.39,04,120/- are deserved to be deleted on this ground itself.

6. Even otherwise on merits of addition, first addition of Rs.14,51,000/-, the loan was taken from the Director of the company and same were supported by the confirmation, Income Tax Return and details of the source of funds available with the Director evidenced from the pass book. Further with respect to unsecured loan from Ms. Alpna Saxena of Rs.8,40,000/- the assessee submitted copy of confirmation, bank statement and the return of income. The sources of the fund were also explained as income from house property, tuition income and fixed deposit closure proceeds for depositing the same. In case of loan of Rs.42,00,000/- from Mr. Himanshu Mittal who is also one of the Director and was running a proprietary concern in the name of Ganesh Trading Company and the funds were transferred from the current account of that proprietary concern to the appellant. Assessee submitted the audited accounts of proprietary concern and Income Tax return of the firms over and above the proprietary concern from which funds were received. The copies of the bank account of those firms were also submitted. With respect to unsecured loan of Rs. 8,30,500/- from Smt. Uma Bansal, assessee submitted the copy of the Income Tax return and bank statement. In case of Smt. Anupam Kumari Jha a loan of Rs. 13,00,000/- was also supported by the Income Tax return, bank statement and the source of the funds received by her on sale of a property. With respect to unsecured loan of Rs. 18,63,630/- from Shri Sharad Kumar Raizada, assessee submitted return of income also the bank statement of the person depositor along with the confirmation statement. The ld. Assessing Officer without making any enquiry disbelieved the submission made by the assessee. In view of this, it is apparent that even on the merits assessee has clearly established the identity, creditworthiness and genuineness of the loans. Assessee in this case has discharged the basic onus cast up on it by producing the confirmation, Income Tax Returns, bank statements, details of source of funds in case of each of the depositors. The ld AO should have thrown back onus on assessee by making inquiries

and proving otherwise. This has not been done. Thus the addition made as such on merits is also not sustainable.

7. In view of this the addition made by the Id. AO and confirmed by the Id. CIT (Appeals) under Section 68 of the Act deserves to be deleted for the reason that ( 1) it was not part of reasons for limited scrutiny, ( 2) no enquiries made by the Assessing Officer on the basic onus discharged by assessee of loans. and (3) on the very next day of conversion of case from limited scrutiny to complete scrutiny assessment order is passed, (4) Framing of the draft assessment order and sent to PR CIT along with seeking approval for conversion of limited scrutiny case to complete scrutiny.
  
8. Now coming to the only issue of the reasons stated for limited scrutiny for verification of large share premium received during the year survives as it was part of the reasons for which the case of the assessee was selected for limited scrutiny. The fact shows that assessee has issued 84,000 equity shares having a face value of Rs. 10/- each on which part payment of Rs.5/- has been received during the year, issued at a premium of Rs. 45/- per share. The total premium charged for the issue of share was Rs. 37,80,000/-. The Assessing Officer made the above addition holding that the fair market value of the share on the net asset basis is only Rs. 14.46. Assessee has determined the price as per certificate of CA applying discounted cash flow [DCF] method determining price at Rs 55/- per share, justifying premium of Rs 45/- per share. Ld AO considered book value of the shares at Rs 14.64 per share only. Therefore, assessee has charged excess premium of Rs. 40.54 on 84,000 shares, the amount of Rs. 34,05,360/- was added to the income. Before the CIT (Appeals) assessee submitted the valuation report certified by a Chartered Accountant under Rule 11UA of the Act showing the fair market value of the share on the basis of discounted cash flow method was Rs. 55/- per share. It was to justify the share premium of Rs. 45/- per share. The Id. CIT (Appeals) did not consider the above valuation report and confirmed the action of the Id. Assessing Officer. On careful examination of Rule 11UA of the Income tax Rules, 1962, the assessee can value the shares for determining its fair market value of unquoted equity share either at the book value of the assets

as per the prescribed formula or as per the discounted free cash flow method. The assessee has justified the valuation of shares by adopting discounted free cash flow method and such method is one of the acceptable methods as per Rule 11UA and the ld. CIT (Appeals) did not find any fault in the same. The ld. Assessing Officer was also supplied with the above evidences and did not comment against the same. Unless the valuation made by the assessee applying Discounted cash flow method is not found fault with by pointing out deficiencies and inadequacies, same cannot be rejected at threshold. In view of this, we do not find any merit in the addition. In view of this the addition of Rs. 34,05,360/- made under Section 56(2)(viib) is devoid of any merit.

9. In view of this, Ground Nos. 2 and 3 with respect to the with respect to the addition of cash credit and Ground Nos. 4 and 5 with respect to addition under Section 56(2)(viib) of the Act are allowed.
10. With respect to the other Grounds of appeal Nos. 6 to 11 are not required to be adjudicated as they become merely academic in view of our decision above.
11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on : 28/12/2020.

Sd/-  
( H. S. SIDHU )  
JUDICIAL MEMBER

Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated : 28/12/2020

\*MEHTA\*

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi

|   |             |
|---|-------------|
| Date of dictation   | 22.12.2020. |
| Date on which the typed draft is placed before the dictating member                   | 23.12.2020. |
| Date on which the typed draft is placed before the other member                       | 28.12.2020. |
| Date on which the approved draft comes to the Sr. PS/ PS                              | 28.12.2020. |
| Date on which the fair order is placed before the dictating member for pronouncement  | 28.12.2020. |
| Date on which the fair order comes back to the Sr. PS/ PS                             | 28.12.2020. |
| Date on which the final order is uploaded on the website of ITAT                      | 28.12.2020. |
| date on which the file goes to the Bench Clerk  | 28.12.2020. |
| Date on which the file goes to the Head Clerk   |             |
| The date on which the file goes to the Assistant Registrar for signature on the order |             |
| Date of dispatch of the order   |             |