

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A": NEW DELHI  
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT  
AND  
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

**ITA No. 4034/Del/2024  
(Assessment Year: 2015-16)**

ACIT, Circle-34(1), New Delhi	Vs.	B. K. Sales Corporation, 804, 8 <sup>th</sup> Floor, E2 Block, Civic Centre, New Delhi
(Appellant)		(Respondent)
		<b>PAN: AAAFB4846K</b>

Assessee by :	Shri Ashwani Kumar, CA Shri Ankur Agarwal, CA
Revenue by:	Shri Ajay Kumar Arora, Sr. DR
Date of Hearing	23/06/2025
Date of pronouncement	27/05/2025

**O R D E R**

**PER AMITABH SHUKLA, AM**

1. This appeal by Revenue is directed against the order of National Faceless Appeal Centre (NFAC), Delhi [for short hereinafter referred to as the "(Ld. NFAC)"] dated 04.07.2024 for Assessment Year 2015-16. The word Act hereinafter in this order shall mean the Income Tax Act, 1961.

2. The only issue contested by the revenue through its grounds of appeal are regarding the decision of the Id CIT(A) in deleting the addition of Rs. 3,83,08,176/- made by the Id AO on account inadmissible interest u/s 36(1)(iii) of the Act. Explaining the brief factual matrix of the case the Id DR submitted that the Id AO had noted that the Assessee had debited

expenditure of Rs. 2,02,10,590/- in its profit and loss account as an interest expenses. The Id AO noted that Section 36(1)(iii) of the Act provides for allowance of interest on borrowed capital provided the same is utilized for the purposes of business or profession. The Id AO observed that in the present case interest bearing funds were utilized by the Assessee for investment in short term deposits (SDR) which did not had any connection with the Assessee's main line business. Accordingly, the Id AO concluded that an amount of Rs. 3,83,08,176/- represented such interest and which was liable for addition u/s 36(1)(iii) of the Act. The Id DR argued that the addition made by the Id AO is based upon correct understanding the facts of the case. It was urged that consequently the relief accorded by the Id CIT(A) is erroneous and excessive and deserves to be deleted.

3. The Id counsel for the Assessee at the outset submitted that the order of the Id AO is hit by an incurable defect inasmuch as the Id AO has exceeded his authority available under the limited scrutiny instructions of the Board. It was submitted qua CBDT Instruction No. 5/2016 dated 14.07.2016, that it has been clearly mandated that an AO will have to restrict his enquiries/ investigation and consequent addition to the issues for which the case has been taken up for the limited scrutiny. Thus, an AO does not has the authority to travel beyond the mandate of limited scrutiny issues for which a case has been selected. The Id counsel argued that as per first page of the assessment order, the case was selected for five reasons as under:-

*“The case was selected for limited scrutiny with the following reasons:-*

*a. Large specified domestic transaction (form 3CEB)*

- b. *Mismatch in amount paid to related persons u/s 40A(2)(b) reported in Audit report and ITR.*
- c. *High interest expenditure against new capital added in work in progress or addition made to fixed assets.*
- d. *Higher turnover reported in service tax return compared to ITR and Assessee has deposited large amount of cash in saving bank account.*
- e. *Mismatch of custom duty paid as shown in the ITR with the Duty paid as per export import data (CBEC Tab of ITS)*

4. It was argued by the Id counsel for the Assessee that in neither of the five reasons there was any mandate to examine allowability of interest u/s 36(1)(iii) of the Act. Thus, the addition per se was stated to be inadmissible. On the issue of merits of the addition also the Id counsel submitted that the order passed by Id CIT(A) is based upon correct understanding of the facts of the case and that no further interference is required to be made therein.

5. We have heard rival submissions in the light of the materials available on the record. On the issue of violation of limited scrutiny instruction, the Id DR argued that item 'c' extracted by the Id AO on first page of this order qua reasons of limited scrutiny refers to reason "*high interest expenditure against new capital added in work in progress or addition made to the fixed asset.*" It was argued that the impugned reason covered AO's action of enquiring and making addition u/s 36(1)(iii) of the Act. The justification given by the Id DR has been found to be far from satisfactory and highly unconvincing. It is trite law that words and phrases used in judicial proceedings cannot be understood in isolation and have to be understood in complete contextual environment. We have noted that the Id DR

basically is pressing on the word “*high interest expenditure*” so as to justify the addition of the Id AO. The same is not correct because the phrase “*high interest expenditure*” is to be understood only in the light of expenses qua new capital added or any additions to fixed assets. No such factual fact is found to be existing in the controversy of addition u/s 36(1)(iii) of the Act raised by the Id AO. We, therefore, cannot subscribe to the reasoning put forth by the revenue.

6. This therefore, brings us to the first controversy as to whether the instructions of CBDT are binding upon assessing authorities or not. We have noted that Hon’ble Jurisdictional High Court in its decision in the case of Best Plastics Pvt. Ltd reported in 169 taxmn 4 wherein it has held that the instructions of CBDT are binding upon the assessing authorities. Thus, we are of the considered view that Instruction No. 5 of 2016 dated 14.07.2016 of CBDT mandating adherence to only limited scrutiny condition by the Id AOs of the department is mandatory and binding. The impugned instruction postulates that an AO may travel beyond the reasons given in the limited scrutiny parameters, provided he obtains necessary approval from his Pr. Commissioner and proceeds to convert the case into a complete scrutiny case. We have also noted that there exists a catena of cases stipulating that an AO is to restrict his enquiry and consequent addition only to the issues for which a case was selected for limited scrutiny assessment and cannot travel beyond. Such view has, interalia, been held by Hon’ble Punjab and Haryana High Court in the case of Crystal Phosphates Ltd reported in 152 taxmann.com 232 and Calcuta High Court in the case of Principal Commissioner of Income-tax Vs. Weilburger Coatings (India) (P.) Ltd. reported in 155 taxmann.com 580.

7. Thus, in the case at 155 taxmann.com 580 (supra) it has been observed as under:-

*“Learned senior Counsel for the respondent/assessee has placed before us another Instruction issued by the CBDT dated 30th November, 2017, being F.No. DGIT(Vig.)/HQ/SI/2017-18, wherein the CBDT has noted instances where some of the Assessing Officer were travelling beyond the issues while making assessment in limited scrutiny cases by initiating inquiries on new issue without complying with mandatory requirements of the relevant CBDT Instruction dated 26.09.2014, 29.12.2015 and 14.07.2016. It has been stated that these instances have been viewed seriously by the CBDT and in one case the Central Inspection Team of the CBDT was tasked with examination of assessment records on receipt of allegations of several irregularities and among other irregularities it was found that no reasons had been recorded for expanding the scope of limited scrutiny, no approval was taken from the PCIT for conversion of the limited scrutiny case to a complete scrutiny case and the order sheet was maintained very perfunctorily. Further, the CBDT has recorded that this gave rise to a very strong suspicion of mala fide intentions and the Officer concerned has been placed under suspension. Therefore, it was reiterated that the Assessing Officer should abide by the Instructions of CBDT while completing limited scrutiny assessment and should be scrupulous about maintenance of note sheets in assessment folders.*

**9.** *Thus, considering these aspects, we are of the view that the learned Tribunal rightly allowed the assessee's appeal on the said issue. This Court had an occasion to consider a somewhat similar issue in the case of Pr. CIT v. Sukhdham Infrastructures LLP, in [ITAT No. 164 of 2023, dated 14-8-2023]. In the said case an identical contention as raised before us was raised stating that at best the action of the Assessing Officer could be construed to be an irregularity. While considering such a contention in Sukhdham Infrastructures LLP the Court rejected the same with the following observation :-*

*"While considering the said issue, the Hon'ble Supreme Court noted the distinction between the statutes affecting rights and those affecting mere procedure. The revenue cannot rely upon the said decision as the scheme of assessment as provided under Section 143 of the Act is a complete code by itself and the circumstances under which the power under sub-section (2) of Section 143 could be invoked has been clearly spelt out and on a reading of sub-section (3) of Section 143, it is evidently clear that on the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee,*

*and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.*

*Therefore, the question of part of the provision being procedural is an incorrect interpretation of the scheme provided under Section 143 of the Act. Further, as noted above, the CIT(A) has examined the merits of the matter and after taking note of the facts granted relief to the assessee to the extent indicated therein. Thus, for the above reasons, we find that the revenue has not made out any case for interference of the order passed by the Tribunal. Accordingly, the appeal fails and is dismissed.*

*The substantial questions of law are answered against the revenue.”*

8. We have noted that it is an evident fact on record that the Id AO has travelled beyond the limited scrutiny parameters for which the case was selected by making the impugned addition of Rs. 3,83,08,176/- u/s 36(1)(iii) of the Act. We have noted that in respectful compliance to the decision of the Hon'ble High Courts discussed supra the said addition was not legally permissible. Accordingly, we direct the Id AO to delete the impugned addition of Rs. Rs. 3,83,08,176/- u/s 36(1)(iii) of the Act. All the grounds of appeal raised by the revenue are therefore dismissed.

9. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 27/06/2025.

-Sd/-  
**(MAHAVIR SINGH)**  
**VICE PRESIDENT**

-Sd/-  
**(AMITABH SHUKLA)**  
**ACCOUNTANT MEMBER**

Dated: 27/06/2025  
A K Keot

Copy forwarded to

1. Applicant

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

ASSISTANT REGISTRAR  
ITAT, New Delhi