

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

BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER, AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 144/DEL/2019  
Assessment Year: 2015-16

CBS International Projects P. Ltd. Vs.  
F - 26/124, Sector - 7  
Rohini, Delhi

The A.C.I.T  
Circle 5(2)  
New Delhi

PAN No. : AADCC 0446 Q

(APPELLANT)

(RESPONDENT)

Appellant by : Shri Kapil Goel, Adv

Respondent by : Ms. Ashima Neb, Sr. DR

Date of hearing: 27/02/2019

Date of Pronouncement: 28/02/2019

**ORDER**

**PER N. K. BILLAIYA, ACCOUNTANT MEMBER:**

This appeal by the assessee is preferred against the order of the  
ld. CIT(A) - 2, New Delhi dated 20.11.2018 pertaining to A.Y 2015-16.

2. Vide ground No. 1, the assessee has challenged the validity of the  
assessment order framed u/s 143(3) of the Income-tax Act, 1961

[hereinafter referred to as 'the Act' for short] claiming that the return selected for scrutiny assessment for limited scrutiny on two issues and the Assessing Officer has completed assessment by making additions on other issues. Ground No. 2 is in relation to merits of the disallowances made by the Assessing Officer.

3. Since Ground No. 1 goes to the root of the matter, we will address to it first.

4. Return for the year was filed on 30.09.2015 declaring loss of Rs. 4.11 crores. Return was selected for scrutiny assessment through CASS. The limited scrutiny was in respect of :

- (i) higher turnover returned in Service Tax Return as compared to ITR, and
- (ii) mismatch in profit before tax as per profit and loss account and schedule BP of return [Verification of MAT liability]

5. The assessee was asked to explain its case on the two issues, verification of which required the scrutiny assessment. The assessee filed a detailed reply explaining the issues and the Assessing Officer was satisfied with the reply of the assessee. However, while

completing the assessment, the Assessing Officer made the following additions :

i) Interest	Rs. 65,12,658/-
(ii) Advertisement	Rs. 13,21,318/-
(iii) Brokerage & Commission	Rs. 98,41,188/-
(iv) Legal and Professional charges	Rs. 37,53,220/-

6. The assessee strongly objected to the assessment so made before the Id. CIT(A) and vehemently contended that since the return was selected for scrutiny assessment for limited scrutiny which issues were adequately explained and replied, there was no room and scope for traversing beyond the limited scrutiny issues.

7. While deciding this ground, the Id. CIT(A) has observed as under:

*“Further, the Assessing Officer has observed that it was a limited scrutiny case and CBDT Instruction No. 20/2015 dated 29.12.2015 was followed with special emphasis on the two issues given by CASS. As no evidence has been adduced by the appellant to controvert it, this ground is dismissed.”*

8. Before us, the ld. counsel for the assessee drew our attention to the notice exhibited at page 40 and pointed out that the return was selected for limited scrutiny assessment and, therefore, the Assessing Officer has grossly violated the CBDT Instruction No. 20/2015 and 7/2014, thereby making the assessment order erroneous and bad in law.

9. Per contra, the ld. DR strongly supported the assessment order. It is the say of the ld. DR that since the assessee has not accounted for the receipts during the year under consideration, the assessment framed by the Assessing Officer directly flows from the reasons recorded for scrutiny assessment.

10. We have given thoughtful consideration to the orders of the authorities below and have carefully perused the relevant documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules.

11. Notice issued u/s 143(2) of the Act read as under:

"GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE INCOME TAX OFFICER  
WARD 12(1)(4), MUMBAI

To,

CBS INTERNATIONAL PROJECTS PRIVATE LIMITED  
326 MASTER MIND-1, ROYAL PALM 326 MASTER MIND-  
1, ROYAL PALM , ARREY COLONY 400065 .Maharashtra  
India

PAN: AADC	AY: 201	Notice No : ITBA/AST/S/143(2)/2016-	Dated: 19/09/2
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*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. 838399481300915 on 30/09/2015 has been selected for Scrutiny. Following issues have been identified for examination:*

- i. Minimum Alternate Tax (MAT) liability mismatch*
  - ii. Sales Turnover Mismatch*
- 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 27/09/2016 at.11:42 AM in the office, of the undersigned.*

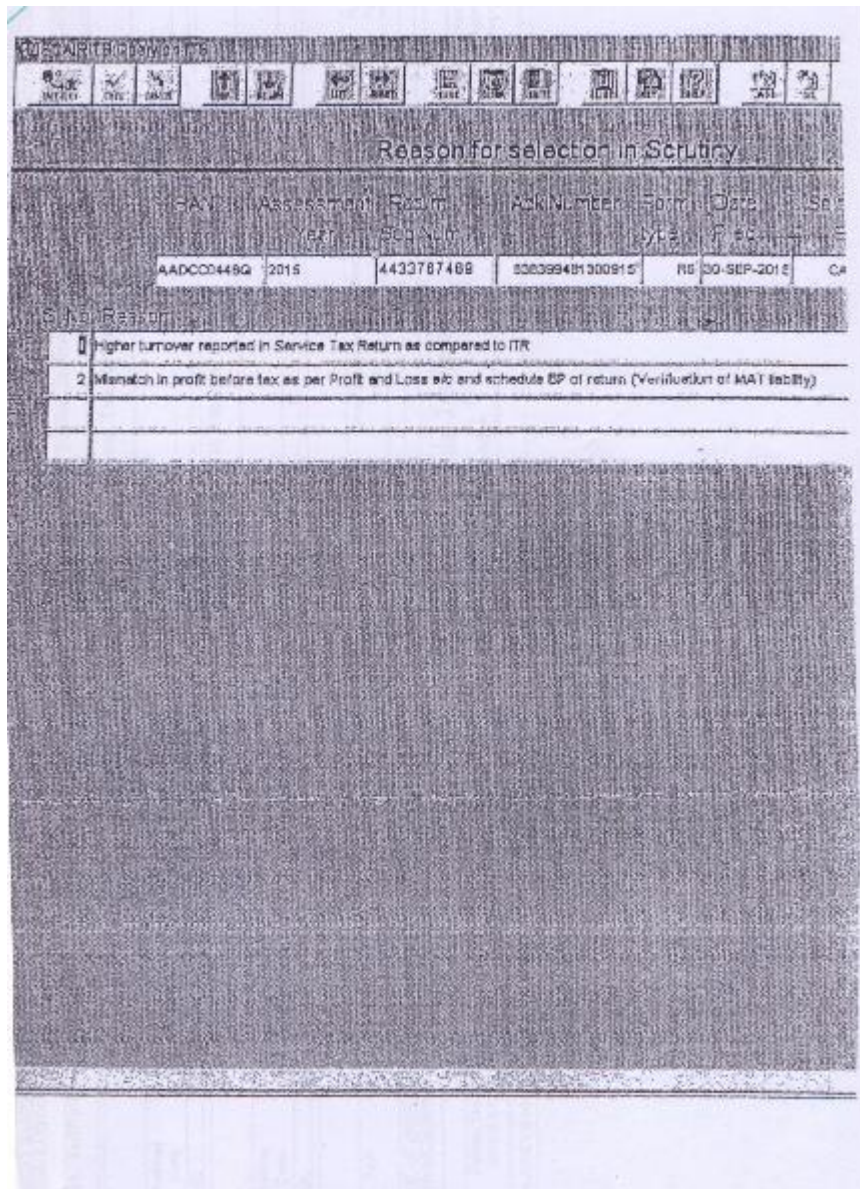
3. *Sending a communication to the undersigned in this regard shall also be treated as sufficient compliance in case no evidence is sought to be produced as-required in Para 2 above.*

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"*

12. The screen shot of the reasons for selection in scrutiny is as under:



13. CBDT Instruction No. 20/2015 is as under:

"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 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.

Sd/- (Ankita Pandey)  
Under Secretary to  
Government of India"

14. With Instruction 7 of 2014, the Board has made it specifically clear that the scope of enquiry should be limited to verification of the particular aspects only. It has also been directed that an approval is required from the PCIT/DIT, in writing, after being specific about the merits of the other issues for comprehensive scrutiny.

15. The said instruction reads as under:

"Instruction No. 7/2014

Government of India  
Ministry of Finance  
Department of Revenue (CBDT)  
Room No. 143E, North-Block, New-Delhi  
Dated the 21st of September, 2014

To

AU Pr. Chief-Commissioners of Income-tax/Chief-Commissioners of Income-tax A

All Pr. Directors-General of Income-tax/Directors-General of Income-tax

Sir/Madam,

Subject: - Scope of enquiry in cases selected for scrutiny during the Financial Year 2014-2015 on basis of AIR/C1B /26AS mis-match-regarding

It has come to the notice of the Board that during the scrutiny assessment proceedings some of the AOs are routinely call for information which is not relevant, for enquiry into the issues to be considered. This has been causing undue harassment to the taxpayers and has also drawn adverse criticism from several quarters. Further, feedback and analysis of such orders indicates that many times the core issues, which formed the basis of selection of the case for scrutiny were not examined properly. Such instances primarily occurred in cases selected for scrutiny under Computer Aided Scrutiny Selection ('CASS') for verification of specific information obtained from third party sources which apparently did not match with the details submitted by the taxpayer in the return of-income.

2. Therefore, for proper administration of the Income-tax Act, 1961 ('Act'), Central Board of Direct Taxes, by virtue of its powers under section 119 of the Act, in supersession of earlier instructions/guidelines on this subject, hereby directs that the

cases selected for scrutiny during the Financial Year 2014-20(15) under CASS, on the basis of either AIR data or CIB information or for non re-conciliation with 26AS data the scope of enquiry should be limited to verification of these are particular aspects only. Therefore, in such cases, an Assessing Officer shall confine the questionnaire and subsequent enquiry or verification only to these specific point(s) on the basis of which the particular return has been selected for scrutiny.

3. The reason(s) for selection of cases under CASS are displayed to the Assessing Officer in AST application and notice u/s 143(2), after generation from AST, is issued to the taxpayer with the remark 'Selected under Computer Aided Scrutiny Selection (CASS)'. The functionality in AST is being modified suitably to flag the reasons for scrutiny selection in AIR/CIB/26AS cases. This functionality is expected to be operationalised by 15<sup>th</sup> October, 2014. Further, the Assessing Officer while issuing notice under section 142(1) of the Act which is enclosed with the first questionnaire would proceed to verify only the specific aspects requiring examination/verification. In such cases, all efforts would be made to ensure that assessment proceedings are completed expeditiously in minimum possible number of hearings without unnecessarily dragging the case till the time-barring date.

4. In case, during the course of assessment proceedings it is found that there is potential escapement of income exceeding Rs. 10 lakhs (if non-metro charges, the monetary limit shall be Rs. 5 lakhs) on any other issue(s) apart from the AIR/CIB/26AS information based on

which the case was elected under CASS requiring substantial verification, the case may be taken up for comprehensive scrutiny with the approval of the Pr. CIT/DIT concerned. However, such an approval shall be accorded by the Pr. CIT/DIT in writing after being satisfied about merits of the issue(s) necessitating wider and detailed scrutiny in the case. Cases so taken up for detailed scrutiny shall be monitored by the Pr. CIT/Addl. CIT concerned.

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

6. Hindi version to follow.

(Rohit Garg)

Deputy Secretary to the Government of India"

16. A perusal of the aforesaid instruction shows that the Assessing Officer can widen the scope of scrutiny even if it is selected for scrutiny assessment under CASS. However, the condition precedent for such action of the Assessing Officer is that he has to seek prior approval of the higher authorities. A perusal of the assessment order shows that the Assessing Officer has not mentioned as to when the permission from the PCIT was sought to make further enquiries in the case of the assessee. Considering the facts of the case in totality, in the light of the CBDT Instructions mentioned hereinabove, qua notice u/s 143(2) of the Act, we are of the considered opinion that the

assessment order so framed by the Assessing Officer is not in consonance with Instruction of the CBDT and, therefore deserves to be quashed. The order of the Id. CIT(A) is accordingly set aside.

17. Since we have quashed the assessment order, we do not find it necessary to dwell into the merits of the case.

18. In the result, the appeal of the assessee in ITA No. 144/DEL/2019 is allowed.

**Order pronounced in the open court on 28.02.2019.**

**Sd/-**

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

**Sd/-**

**(N. K. BILLAIYA)  
ACCOUNTANT MEMBER**

Date: 28.02.2019

VL/

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	.02.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	