

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

**BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No.3207/Del/2019, A.Y. 2015-16

M/s. Shivalik Educational and Placement Services (P) Ltd. C/o M/s. RRA TAXINDIA D-28, South Extension, Part-1, New Delhi-110049 PAN : AAJCS1852Q (Appellant)	Vs.	ACIT, Central Circle-13, New Delhi (Respondent)
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Appellant by	Dr. Rakesh Gupta, Sh. Somil Agrawal, Adv. And Sh. Deepesh Garg, Adv.
Respondent by	Sh. Vivek Kumar Upadhyay, Sr. DR

Date of Hearing	18/12/2023
Date of Pronouncement	21/12/2023

ORDER

PER YOGESH KUMAR U.S., JM:

The present appeal filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals)-XXVI, New Delhi ["Ld. CIT(A)", for short], dated 30th November, 2018 for Assessment Year 2015-16.

2. Grounds taken in this appeal are as under:

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned assessment order passed by Ld. AO and that too without assuming Jurisdiction as per law.

2. That in any case and in any view of the matter, additions made could not have been made in the present assessment.

3. That having regard to the facts and circumstances of the

case, Ld. CIT(A) has erred in law and on facts in confirming the action of ld. AO in making aggregate addition of Rs. 4,96,00,000/- on account of unsecured loan by treating it as alleged unexplained cash credit u/s 68 and that too by recording incorrect facts and findings and without observing the principles of natural justice.

4. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of ld. AO in making aggregate addition of Rs. 4,96,00,000/- on account of unsecured loan by treating it as alleged unexplained cash credit u/s 68, is bad in law and against the facts and circumstances of the case.

5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs. 11,52,000/- on account of alleged commission paid u/s 69C of the Income Tax Act, 1961.

6. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.36,66,823/- on account of interest paid on the said loans u/s 36(l)(iii) and that too by recording incorrect facts and findings and without observing the principles of natural justice.

7. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in passing the impugned assessment order and additions made therein is illegal, void ab initio, contrary to law and facts, beyond jurisdiction and without observing the principles of natural justice and deserves to be quashed .

8. That having regard to the facts and circumstances of the

case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234B and 234C of Income Tax Act, 1961.

9. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

3. Brief facts of the case are that, the Assessee filed return of income declaring income of Rs. 41,80,240/- and thereafter the case of the Assessee was selected through CASS for 'limited scrutiny' and a notice u/s 143(2) of the Income Tax Act, ('Act' for Short) was issued. The reasons for the limited scrutiny selection of the Assessee's case are as under:-

(i) Large interest expenses relatable to exempt income (u/s 14A)

(ii) High interest expense as compared to business turnover.

The assessment order came to be passed u/s 143(3) of the Act by making additions of Rs. 4,96,00,000/- u/s 68 of the Act on account of unsecured loan, Rs. 11,52,000/- on account of unaccounted expenditure and further made addition of Rs. 36,66,823/- on account of interest expenses vide order dated 29/12/2017.

4. As against the assessment order dated 29/12/2017, the Assessee preferred an Appeal before the Ld. CIT(A), the Ld. CIT(A) vide order dated 30/11/2018, dismissed the Appeal filed by the Assessee. Aggrieved by the order of the Ld. CIT(A) dated 30/11/2018, the Assessee preferred the present Appeal on the grounds mentioned above.

5. The Ld. Counsel for the Assessee submitted that, the case of the Assessee was selected for 'limited scrutiny' for the purpose of verifying Large interest expenses relatable to exempt income (u/s 14A) and High interest expense as compared to business turnover, but the additions have been made other than the reasons for which the limited scrutiny has been selected for, which is not only illegal, arbitrary but also contrary to the circulars of the CBDT.

6. Per contra, the Ld. Departmental Representative submitted that the Ld. A.O. has passed the assessment order in accordance with law which has been rightly confirmed by the CIT(A), therefore, the orders of the Lower Authorities requires no interference, thus sought for dismissal of the Appeal filed by the Assessee.

7. We have heard the parties and perused the materials. The case of the assessee was selected for limited scrutiny for the examination of the issues i.e. "Large interest expenses relatable to exempt income (u/s 14A) and High interest expense as compared to business turnover. But the Ld. A.O. has travelled beyond the reasons recorded for scrutiny selection and made the additions in following manners:-

" 7. Based on the above discussion it can be inferred that assessee company has saken bogus joans in lieu of cash for routing unaccounted income in its books of account from established entry operators Sh. Deepak Agarwal and Sh. Mukesh Kumar who were utilizing several companies for providing accommodation entries including above mentioned company, traces of which are also found from the seized material mentioned above. It is also apparent from the movement of funds

passed through the bank accounts of these companies. This may be mentioned that no details in the assessment proceeding has been filed showing proper confirmation/evidences relating to unsecured loans received by the assessee company. The genuineness and creditworthiness of the parties who had given unsecured loans to the assessee company has already been exhausted during search & seizure operation conducted by the Investigation wing in the case of Shri. Deepak Agarwal & Shri Mukesh Kumar. Therefore, in view of the discussion held in the above paras the unsecured loans amounting to Rs.4,96,00,000/- (5,76,00,000-80,00,000) is liable to be added to the total income of the assessee company as unexplained cash credits in terms of sec. 68 of the I.T. Act, 1961.

In view of the above fact, addition of Rs.4,96,00,000/- is made u/s 68 of the I.T. Act, 1961 in the hands of the assessee.

[Addition of Rs.4,96,00,000/-]

8. In view of the above discussion, wherein it has been held that the whole amount of unsecured loans were noting but accommodation entries provided to the assessee company by the established entry providers directly or through layers on which normally accommodation entry operators charged commission @2%. Therefore, the assessee company has made unaccounted expenditure of an amount of Rs. 11,52,000/- (2% of Rs.5,76,00,000/-) to arrange impugned entries. Hence, an amount of Rs.11,52,000/- is added in the hands of assessee company being unaccounted commission expenditure as per provisions of section 69C of the I.T. Act, 1961.

(Addition of Rs. 11,52,000/-)

Penalty u/s271(1)(c) of the I.T. Act, 1961 has also been initiated separately for furnishing inaccurate particulars of income by the assessee.

9. It has also been examined from the submissions filed by the assessee company that it has claimed interest expenditure amounting to Rs.36,66,823/- for the relevant period. Vide questionnaire dated 13.12.2017, the AR of the assessee company was categorically asked to furnish complete details of interest payment and its utilization for business purpose to qualify for allowance u/s36(1)(iii) of the I.T. Act, 1961.

Assessee company has failed to establish qualification of interest expenses incurred on such unsecured loans for allowance u/s36(1)(iii) of the Act and merely submitted that "we have received unsecured loan amounting Rs.5,76,00,000 during the

year in which we have paid interest on unsecured loan and deducted the TDS and deposit into central Government account and paid the interest."

Further, in the preceding Para it has also been established that the entities from where the assessee company has raised unsecured loans are bogus companies/paper entities engaged in providing accommodation entries in lieu of cash in the disguise of unsecured loans, bogus purchases, expenses etc and as such question of payment of any interest thereon merely a tool to minimize the taxable income of the assessee.

Therefore, in view the above discussion interest expenses amounting to Rs.36,66,823/- is disallowed and added back to the total income of the assessee as discussed above..

[Disallowance: Rs.36,66,823/-]

Penalty u/s 271(1)(c) of the I.T. Act, 1961 has also been initiated separately for furnishing inaccurate particulars of income by the assessee.

10. Subject to the discussion in forgone paras, total income of the assessee for the Assessment Year 2015-16 is computed as under:-

Returned income	Rs.41,80,240/-
Add: Disallowance as per para 7 above	Rs. 4,96,00,000/-
Addition as per para 8 above	Rs. 11,52,000/-
Disallowance as per Para 9 above	Rs. 36,66,823/-
Assessed total income	Rs. 5,85,99,063/-

8. It is found that the learned Assessing Officer travelled beyond the issues involved in the "limited scrutiny" and made enquiries and the additions of Rs. 4,96,00,000/- u/s 68 of the Act on account of unsecured loan, Rs. 11,52,000/- on account of unaccounted expenditure and further made addition of Rs. 36,66,823/- on account of interest expenses.

9. On the background of the above facts and circumstances, we find it handy to refer the instructions of CBDT issued in respect of examination of issue other than the reasons taken up in limited scrutiny case. The instructions of the CBDT are 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 29th 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 26-9-2014 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 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 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 Ahmadabad).

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.

(Ankita Pandey)

Under Secretary to Government of India”

10. Further, Instruction No. 5 of 2016 dated 14.07.2016 reads as under:

“Instruction No. 5/2016 Government of India Ministry of Finance Department of Revenue Central Board of Direct Taxes North Block, New Delhi, the 14th of July, 2016 Subject: Direction regarding scope of enquiry in cases under 'Limited Scrutiny' selected through CASS 2015 & 2016-regd.-

Vide Instruction No. 20/2015 dated 29.12.2015 in File of even number, Board has laid down Standard Operating Procedure for handling of cases under 'Limited Scrutiny' which were selected through Computer Aided Scrutiny Selection in 'CASS Cycle 2015'. In these cases, it was stated that the general

scope of enquiry in scrutiny proceedings should be restricted to the relevant parameters which formed the basis for selecting the case for scrutiny. However, in revenue potential cases, it was further provided that 'Complete Scrutiny' could be conducted, if there was potential escapement of income above a prescribed monetary limit, subject to the approval of administrative Pr. CIT/CIT/Pr. DIT/DIT.

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.

4. It is further clarified that in cases under 'Limited Scrutiny', the scrutiny assessment proceedings would initially be confined only to issues under 'Limited Scrutiny' and questionnaires, enquiry, investigation etc. would be restricted to such issues. Only upon conversion of case to 'Complete Scrutiny' after following the procedure outlined above, the AO may examine the additional issues besides the issue(s) involved in 'Limited Scrutiny'. The AO shall also expeditiously intimate the taxpayer concerned regarding conducting 'Complete Scrutiny' in such cases.

5. It is also clarified that once a case has been converted to 'Complete Scrutiny', the AO can deal with any issue emerging from ongoing scrutiny proceedings notwithstanding the fact that the reason for such issue have not been included in the Note.

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.

8. The contents of this Instruction may be brought to the notice of all for necessary compliance.

(Rohit Garg)
Deputy Secretary to the Government of India

11. The above said Instructions are summarized as under:

- i. The questionnaire u/s 142(1) of the Act shall be confined only to the issue of limited scrutiny.
- ii. Approval of PCIT/CIT concern iii. PCIT/CIT concern shall grant approval in writing and after being satisfied on the merits of the case.
- iv. Such cases shall be monitored by range head.
- v. In limited scrutiny cases enquiry shall be restricted only on the issues of limited scrutiny.
- vi. Only after conversion of case to complete scrutiny and after following the procedure outlined above the A.O. may examine the issues other than limited scrutiny issues.
- v. The A.O. shall intimate the assessee regarding conducting complete scrutiny.
- vi. The provisions of Sec. 144A of the Act should be invoked in suitable cases.

vii. To prevent the roving and fishing enquiries, such cases should be picked up for review and inspection by administrative authorities.

12. Reliance is also being placed in the order of the Co-ordinate Bench of ITAT in the case of CBS International Projects Pvt. Ltd. Vs ACIT, New Delhi in ITA No. 144/Del/2019 and order of the Hon'ble Jurisdictional High Court in the case of Best Plastics Pvt. Ltd. 295 ITR 256, wherein it was held that the assessment order passed by the Assessing Officer disregarding the instructions of the CBDT are liable to be set aside and no substantial question of law arises. The said Judgment relied upon the decision of Hon'ble Supreme Court in the case of Commissioner of Customs Vs Indian Oil Corporation and also the judgment of Hon'ble Supreme Court in the case of UCO Bank Vs CIT: 237 ITR 889.

13. Considering the above facts and circumstances and also the CBDT Circular and the Judicial Precedents, we hold that the Assessing Officer can widen the scope of scrutiny even the case is selected for limited scrutiny under CASS, however, the condition precedent for such widening of the scope is that the Assessing Officer has to seek prior approval of the authorities mentioned. Such prior approval and the permission of the PCIT is lacking in the instant case. There was no satisfaction about the merits of the issue which necessitated complete scrutiny in the instant case. Hence, the Assessment framed by the Assessing Officer on the issues which are not in consonance of the instruction of CBDT are liable to be quashed. The

additions made by the Assessing Officer being beyond the scope of the limited scrutiny and the same is deleted.

14. In the result, the appeal of the assessee is allowed.

Order pronounced in open Court on 21st December, 2023

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER
Dated: 21/12/2023
B.R./R.N, Sr. Ps.

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

