IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "I" BENCH : MUMBAI

BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT
AND
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

ITA No.	A.Y.	Appellant	Respondent
6029/Mum/2025	2017-18	Bobst Bielefeld GmbH, C/o. Gut No. 82, 124 to 132, 136 & 195 (part) At & Post Village Kasar Amboli, Ghotawade Road, Pune, Taluka Mulshi, Pune Maharashtra-412108 [PAN: AAFCB9356E]	Asst. Commissioner of Income Tax, INT Tax Circle-1(3)(1), Room No. 14, A Wing, 3rd Floor, Mittal Court, 22, Nariman Point, Mumbai-400021
6030/Mum/2025	2018-19		

For Assessee :	Shri Siddesh Chaugule
For Revenue :	Shri Krishna Kumar, Sr.DR

Date of Hearing :	04-12-2025
Date of Pronouncement :	26-02-2026

O R D E R

PER VIKRAM SINGH YADAV, A.M :

These two appeals are filed by the assessee against the respective orders of the Learned Commissioner of Income Tax (Appeals)-55, Mumbai ['Ld.CIT(A)'], both dated 15-07-2025, pertaining to Assessment Years (AYs.) 2017-18 & 2018-19, wherein the assessee has taken the following grounds of appeal:

Grounds of appeal (AY. 2017-18):

1. Ground No. 1 - General

On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in upholding the assessment order passed by the Learned Assessing Officer ('Ld. AO'), which resulted in determining income tax liability to INR 53,19,994 on the Appellant's assessed income and consequential interest thereon.

2. Ground No. 2 Taxing the income under wrong head of income and non-consideration of the beneficial provision of India-Germany Double Taxation Avoidance Agreement ('the Treaty')

On the facts and in the circumstances of the case and in law, the Ld. AO has erred in not considering the submission of the Appellant to tax the income of INR 1,26,59,423 under the head "Fees for Technical Services" (FTS) under Article 12 instead of income inadvertently reported under the head of "Profits and Gains from Business or Profession" in the Income-tax return. Accordingly. Ld. CIT(A) has erred in upholding the order passed by Ld. AO

3. Ground No. 3-Non grant of the beneficial provisions of the Treaty

Without prejudice the Ground No.2, the Ld. AO has erred in not appreciating the fact that the Appellant, being a tax resident of Germany, having no Permanent Establishment (PE) in India, is eligible to claim the beneficial tax provision under the Treaty. Thus, Ld. AO has erred in taxing the income under the provisions of the Act. Accordingly, Ld. CIT(A) has erred in upholding the order passed by Ld. AO.

4. Ground No. 4-Incorrect calculation of Interest under section 234A, 234B and 234C of the Act

On the facts and in the circumstances of the case and in law, consequential erroneous interest liability under sections 234A, 2348 and 234C of the Act should not arise and needs to be deleted."

Grounds of appeal (AY. 2018-19):

"1. Ground No. 1 - General

On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in upholding the assessment order passed by the Learned Assessing Officer ('Ld. AO'), which resulted in determining income tax of INR 58,24,207 on the Appellant's assessed income and consequential interest thereon.

2. Ground No. 2 Taxing the income under wrong head of income and non-consideration of the beneficial provision of India-Germany Double Taxation Avoidance Agreement ('the Treaty')

On the facts and in the circumstances of the case and in law, the Ld. AO has erred in not considering the submission of the Appellant to tax the income of INR 1,01,85,082 under the head "Fees for Technical Services" (FTS) under Article 12 and income of INR 36,74,155 under the head "Interest Income" under Article 11 of the Treaty instead of income inadvertently reported under the head of "Profits and Gains from Business or Profession" in the Income-tax return. Accordingly, Ld. CIT(A) has erred in upholding the order passed by Ld. AO

3. Ground No. 3-Non grant of the beneficial provisions of the Treaty

Without prejudice the Ground No.2, the Ld. AO has erred in not appreciating the fact that the Appellant, being a tax resident of Germany, having no

Permanent Establishment (PE) in India, is eligible to claim the beneficial tax provision under the Treaty. Thus, Ld. AO has erred in taxing the income under the provisions of the Act. Accordingly, Ld. CIT(A) has erred in upholding the order passed by Ld. AO.

4. Ground No. 4-Incorrect calculation of Interest under section 2348 and 234C of the Act

On the facts and in the circumstances of the case and in law, consequential erroneous interest liability under sections 2348 and 234C of the Act should not arise and needs to be deleted.

5. Ground No. 5-Erred in initiating penalty proceedings under section 270A of the Act

The Ld. CIT(A) erred in dismissing the ground as premature, despite the Ld. AO having initiated penalty proceedings without appreciating that the reporting error in the ITR was inadvertent and disclosed voluntarily by the Appellant. In the view of the above, the initiation of penalty proceedings is unjustified and liable to be quashed/dropped."

2. Since common issues are involved, both these appeals were taken up for hearing together and are being disposed-off by way of this consolidated order. With the consent of both the parties, the appeal in ITA No. 6029/Mum/2025 for Assessment Year 2017-18 is taken as a lead case for the purposes of discussion.

3. Briefly stated, facts of the case are that the assessee-company, incorporated under the laws of Germany, filed its return of income for the AY. 2017-18 on 29-03-2018, declaring total income of Rs. 1,26,59,423/- under the head "income from business and profession" in terms of provisions of the Act and tax was computed @30% plus surcharge and cess and tax liability was determined at Rs. 41,85,584/- and after claiming relief u/s. 91 amounting to Rs. 29,19,641/-, net tax liability was determined at Rs. 12,65,943/- and after claiming credit for TDS amounting to Rs 12,65,943, final tax liability was determined at Nil.

4. The return was selected for limited scrutiny under Computer Assisted Scrutiny Selection (CASS) for examination of double taxation relief claimed

u/s. 90/91 of the Act. Notices u/s. 143(2) and 142(1) of the Act were issued calling for the necessary information and documentation and thereafter, the assessment proceedings were completed and order u/s. 143(3) of the Act was passed on 21-11-2019, wherein the AO accepted the total income as declared by the assessee from business/profession amounting to Rs. 1,26,59,423/-and while computing the tax liability, the AO determined the tax payable @40% plus applicable surcharge and cess and total tax liability was determined at Rs. 53,19,994/- and after allowing relief u/s. 91 of the Act amounting to Rs. 29,19,641/-, net tax liability was determined at Rs. 24,00,353/- and thereafter, considering levy of interest u/s. 234A, 234B and 234C of the Act and after allowing TDS credit of Rs. 12,65,943/-, the final tax and interest liability was determined at Rs. 16,11,425/-.

5. The assessee thereafter carried the matter in appeal before the Ld.CIT(A), who has since sustained the order of the AO and against the said order, the assessee is in appeal before us.

6. During the course of hearing, the Ld.AR submitted that the assessee-company provided technical services to its customers in India and earned income of Rs. 1,26,59,423/-. It was submitted that as per sub-section (2) of section 90 of the Act, the provisions of India-German Tax Treaty shall apply to the extent the same are more beneficial as compared to the provisions of the Act. It was submitted that the assessee, being a tax resident of Germany was eligible to claim beneficial tax rate of 10% under Article 12(2) of the India-German Tax Treaty. It was submitted that at the time of filing of the return of income, the assessee-company could not find an option in the return of income to avail the beneficial tax rate of 10% as provided under the Tax Treaty. Therefore, the assessee-company offered its income to tax under the head “profits and gains from business and

profession" and tax was computed @30% plus applicable surcharge and cess and tax liability was determined at Rs 41,85,584/-. It was submitted that against the said tax liability, the assessee company claimed notional relief of Rs. 29,19,641/- u/s. 91 of the Act effectively determining its tax liability at Rs 12,65,942/- @10% of gross revenues under Article 12(2) of the India-German Tax Treaty. It was submitted that during the assessment proceedings, the assessee-company raised this claim before the AO. However, the AO passed the assessment order, denying the treaty benefit to the assessee-company and tax liability was computed @40% plus surcharge and cess. At the same time, the AO has erroneously allowing notional tax relief of Rs. 29,19,641/- u/s 91 of the Act.

7. It was further submitted that the assessee raised the said contentions before the Ld.CIT(A) as well, however, the same did not find favour with the Ld.CIT(A) and he has upheld the order so passed by the AO. In support of his contentions, reliance was placed by the ld AR on the CBDT Circular No. 14, dt. 11-04-1955, wherein the Board has clarified that "officers of the Department must not take advantage of the ignorance of an assessee as to his rights and the officer should draw the attention of the assessee to any refunds or relief to which they appear to be clearly entitled but which they have omitted to claim for some reason or other." Further, reliance was placed on the following decisions for the proposition that any mistake in ITR can be corrected at appellate level:

i. CIT vs. M/s. Pruthvi Brokers & Shareholders, Income Tax Appeal No. 3908 of 2010, dt. 21st June, 2012;
ii. Anchor Pressings (P.) Ltd vs. CIT [1986] 27 Taxman 295 (SC);
iii. CIT vs. Mahalaxmi Sugar Mills Co. Ltd., [1986] 27 Taxman 267 (SC);
iv. CIT vs. Mahalakshmi Textile Mills Ltd., [1967] 66 ITR 710 (SC);

v. CIT vs. Bharat Aluminium Co. Ltd.,[2007] 163 Taxman 430 (Delhi);

vi. Dilip Dharmsey Khatau vs. ITO [2017] 83 taxmann.com 21 (Mumbai – Trib.];

vii. Van Oord Atlanta B.V. vs. ADIT [2008] 23 SOT 29 (Kolkata) (URO)

8. Per contra, the Ld. CIT-DR submitted that the case of the assessee was selected for limited scrutiny to examine double taxation relief u/s 90/91 claimed by the assessee in its return of income and, therefore, the AO was prevented to examine any other issue other than the double taxation relief claimed by the assessee in its return of income. Further reliance was placed on the findings of the Ld.CIT(A) which are contained in para Nos. 6.1.1 to 6.1.4, of the impugned order which read as under:

> *"6.1.1 Briefly stated the facts of the case are that the case of the appellant for the instant assessment year was selected in limited scrutiny. It is noticed that as per the notice u/s. 143(2) issued to the appellant dated 16.08.2018 and 27.09.2018, the issue identified for examination was "Double Taxation Relief u/s.90/91 of the Act. In this case, the AO passed the impugned assessment order denying the relief claimed by the appellant u/s.90/91 of the Act, while accepting the total income of the appellant as per its ITR. It is noted that the appellant has, however, not disputed this denial of relief u/s 90/91 of the Act by the AO in any of its grounds of appeal. The appellant has, however, claimed that the AO has erred in calculating tax on the amount of income under the head "profits & gains from business and profession" instead of taxing the same u/s.115A of the IT Act. The appellant has claimed that the AO should have appreciated that it is eligible for benefit of India-Germany DTAA and the tax @ 10% under Article 12 of DTAA should be applicable as the impugned income was in the nature of fees for technical services. Thus, it is noted that while the appellant itself has offered its income under the head "profits & gains from business and profession", it has submitted that its income should have been assessed by the AO as FTS as per the DTAA and has claimed that it does not have any PE in India.*
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> *6.1.2 In this regard, on perusal of the impugned assessment order, it is noted that in para 3 of the impugned assessment order, the AO states that the assessee is a resident of Germany and provides professional consultancy from Germany only as and when required by Indian clients. During the year under consideration, the assessee derived income under the head 'Income from Business and Profession' and the appellant submitted copies of computation of*

total income with relevant annexures etc., which were verified by the AO and the total income filed by the appellant was accepted. On perusal of the ITR filed by the appellant, it is noted that it is the appellant itself who in its ITR has offered income under the head "profits and gains from business and profession" in the relevant column of its ITR, and thus, there is no mistake on the part of the AO in treating the said income under the same head as declared by the appellant itself, i.e. under the head "business and profession". In this regard, the appellant has claimed in its written submission quoted above that at the time of filing ITR, it did not find an option to avail the beneficial tax rate of 10% on the FTS income earned by it and hence offered its income under the head "Profits & Gains from Business/Profession". It has been claimed by the appellant that as per the provisions of section 44DA of the Act, any income earned by the foreign company by way of Royalty or FTS from an Indian concern through a PE situated in India shall be computed under the head "Profits and Gains of Business or Profession". The appellant had claimed that it did not have a PE in India during the relevant assessment year and hence the provisions of section 44DA of the Act would not be applicable in its case. The appellant has pointed out that as per the provisions of section 90(2) of the Act, the provisions of the Treaty shall apply to the extent that the same are more beneficial as compared to the provisions of the Act and hence it was entitled to claim the beneficial tax rate of 10% under Article 12(2) of the treaty. The appellant has claimed that alternatively also the income earned by the appellant, would fall under the purview of special rate provided u/s. 115A of the Act for FTS and taxable under the Act at 10.506%. The appellant has claimed that at the time of filing of ITR, it did not find an option to avail the beneficial rate of 10% and hence reported the company's gross income from technical services under the head "business income and offered the entire income to tax @ 33.063% including surcharge and cess instead of 10% as per the treaty. The appellant has alleged that the AO did not consider the provisions of section 90 of the Act and taxed the income at 42.02%. The appellant has relied upon various decisions and the CBDT Circular to claim that the Department must not take advantage of the ignorance of the assessee as to his rights and to assist the taxpayer in every reasonable way. The various other decisions have been cited by the appellant to claim that only due taxes should be collected from the appellant and that the appellant is able to show in a bonafide manner at any stage that as particular item of receipt is not liable to be taxed as income in its hands, then an effort should be made thereto that only correct tax should be recovered. The various decisions cited by the appellant have been claimed to state that the tax rate considered by the appellant of 33.063% without claiming the benefit of lower tax rate while filing the Return of income, it is the duty of the AO to collect legitimate tax and apply the correct income-tax rate applicable to the appellant.

6.1.3 It is noted in the subsequent AY 2018-19, the similar claim of the appellant was examined by the AO that the company had offered its entire income to tax under the head "profits & gains from business or profession" so as to avoid the cess and surcharge liability computed on special income. It was further clarified by the appellant that since the income was reported under the head 'PGBP, tax was calculated at a higher rate of 40%, therefore, to

avoid further tax liability, company claimed relief u/s.90/91. The appellant had claimed that the said income was not taxable as per business income as per relevant Article of the tax treaty in absence of PE, and that it is taxable as per the specific articles in the treaty as FTS and interest. The appellant claimed that the assessee had inadvertently offered its FTS and interest income under the head "profits & gains from business or profession" and had inadvertently claimed relief u/s.90 of the Act for AYs 2017-18 and 2018-19. It is noted that the AO did not accept this submission made in its case by stating that the assessee had not revised its Return of income even after filing original Return on time. For AY 2017-18, scrutiny was completed but the appellant did not file any rectification or 264 or appeal. The AO pointed out that the reason for selection of this case for scrutiny is large relief allowed u/s.90/91 (Business ITR), the same has been accepted by the assessee as inadvertently claimed.

6.1.4 These claims of the appellant have been perused. Firstly, it is noticed that the AO was only permitted as per the terms of "limited scrutiny" to examine the claim of double taxation relief u/s.90/91 of the Act. The appellant has explained that no such double taxation relief u/s.90/91 eligible to it, and this claim was only made by the appellant to arrive at the correct taxation rate as per its own understanding. The AO, therefore, has rightly denied the double taxation relief, which was wrongly claimed by the appellant and no error can be attributed to the AO in this regard. Secondly, it being a case of limited scrutiny, even otherwise, the AO was not permitted by the terms of the scrutiny guidelines to examine any other issue or give its comments thereon or undertake any action thereon. Therefore, the AO was under no obligation to examine and give comments on the eligibility of the appellant to beneficial tax rate and examine the existence or non-existence of a PE in the instant case. Also, the claims made by the appellant that it did not find any option to calculate the correct tax rate in the ITR are not found satisfactory and further, the same could not be satisfactorily demonstrated. In any case, this does not justify making a claim which is factually incorrect. It is noted that it is the appellant itself, who has in its ITR offered the income under the head 'business income' meaning thereby that it accepts the existence of a PE in the instant case. In such circumstances, the action of the appellant in making an allegedly wrong claim under the wrong head and then claiming a non-existent double taxation relief is not at all justifiable. Further, it could not be satisfactorily explained by the appellant regarding the causes, which led to making such a double taxation relief claim. The claim of the appellant is that its own ITR should be allowed to be modified without resorting to filing of a revised Return or filing a revised Return u/s.119(2)(b) of the Act and it has been further claimed that the onus lies on the AO in this regard. These claims are not at all valid, and it is noted that the case laws cited by the appellant have totally different facts than that of the instant case and hence not found applicable. These claims of the appellant are not justifiable and no bonafide could be established by the appellant in this regard. In any case, the AO was prevented by provisions of the term 'limited scrutiny' to examine any other issue other than double taxation relief claimed by the appellant and no dispute has been raised by the appellant regarding denial of "double taxation relief by

the AO. Hence no error could be attributed to the AO in calculating the tax on the amount of income under the head "profits and gains from business and profession" instead of taxing the same u/s. 115A of the Act as is being claimed by the appellant. The powers of the Ld.CIT (Appeals) to entertain such claim and examine the existence or non-existence of a PE, applicability of section 44DA etc. stems from the original power available with the AO and does not travel beyond it. Therefore, this issue is not within the purview of examination by Ld.CIT(Appeals), also. It is noted that the only issue subjected to examination of the AO was that of claim of "double taxation relief and the AO denied the claim after the appellant accepted that the said claim was made inadvertently. Hence, the action of the AO in denying the "double taxation relief cannot be said to "prejudicial to the interest of the appellant". Thus, the appellant also accepts that the said variation made by the AO of denial of double taxation relief is not prejudicial to it. However, the appellant is prejudiced by the alleged non action of the AO, which however, was not legally permitted to the AO, as discussed above. Therefore, the claim made by the appellant that the AO has erred in making an incorrect Computation of tax in its case, is not found correct, since there is no such error made by the AO, as per the above discussion. Accordingly, this claim made by the appellant in ground no. 2 of the appeal is dismissed."

9. We have heard the rival contentions and perused the material available on record. Admittedly, the case of the assessee was selected for limited scrutiny to examine its claim of double taxation relief u/s 90/91 of the Act. In this regard, the assessee during the course of assessment proceedings, in response to notice issued u/s 143(2), submitted that it is tax resident of Germany (copy of tax residency certificate was furnished), has no office/permanent establishment in India and it provides professional consultancy services from Germany only as and when required by Indian clients. It was further submitted by the assessee that in ITR 6 Form, there was no option available to file the return of income claiming tax rate of 10% as per Article 12 of India- Germany tax treaty and where tax liability is determined using special rate of tax, the same would again be subject to surcharge which is not applicable as per tax treaty and as a result, the assessee offered its income to tax under the head "profits and gains from business and profession" and tax was computed @30% (plus applicable surcharge and cess) and tax liability was determined at Rs 41,85,584/- and against the said tax liability, the assessee company

claimed notional relief of Rs. 29,19,641/- u/s. 91 of the Act effectively determining its tax liability at Rs 12,65,942/-, being 10% of gross revenues under Article 12(2) of the India-German Tax Treaty. The Assessing officer considered the submissions so filed by the assessee and passed the assessment order u/s 143(3) dated 21/11/2019 wherein the AO has recorded his findings stating that the assessee is a resident of Germany and provides all professional consultancy from Germany only as and when required by Indian clients and it derives its income under the head 'Income from business and profession" and after verification of details submitted by the assessee, the income was computed at Rs 1,26,59,423/- and while computing the tax liability, the AO determined the tax payable @40% (plus applicable surcharge and cess) and total tax liability was determined at Rs. 53,19,994/- and after allowing relief u/s. 91 of the Act amounting to Rs. 29,19,641/-, net tax liability was determined at Rs. 24,00,353/-.

10. We, therefore, have a situation where subject matter of limited scrutiny i.e, claim of relief u/s 90/91 and the explanation so tendered by the assessee has not been examined by the AO. The assessee has explained that for the purposes of working out its tax liability @ 10% of gross revenues under Article 12 of India-German tax treaty, it has notionally claimed relief u/s 91 of the Act. The AO instead of examining the said explanation has gone ahead and determined the tax liability @ 40% and at the same time, allowed relief so claimed u/s 91 of the Act.

11. There is no finding as to how the relief so claimed u/s 91 has been allowed by the AO. Section 91 provides unilateral relief from double taxation to any person resident in India in respect of its income which accrued or arose outside India and it has paid taxes in any country with which there is no agreement under section 90 of the Act and such relief is

offered in the form of a foreign tax credit and is limited to the lowest payable tax rate among the two countries on the doubly taxed income. Here is a situation where the assessee is a non-resident company and having Indian sourced income and thus, the question of relief u/s 91 doesn't arise at first place. Therefore, where the assessee pleads that it has notionally claimed such relief for the purposes of arriving at its tax liability, the explanation so tendered needs to be examined in right earnest which has been completely ignored in the instant case.

12. Further, if we were to go by the reasoning adopted by the ld CIT(A) wherein he has held that the AO was only permitted to examine the claim of double taxation relief u/s 90/91 as per terms of limited scrutiny, the action of the AO in determining tax liability @ 40% will exceeds the scope of limited scrutiny and therefore, the said action of the AO deserve to be set-aside.

13. In our overall analysis, we find that admittedly, the assessee is not legally eligible for any relief u/s 91 of the Act, a position accepted by the assessee as well, at the same, whether the assessee is eligible for beneficial tax rate of 10% as per Article 12 of the India- German tax treaty, the same needs to be examined. In the return of income, though no specific claim was made, at the same time, the assessee has demonstrated through its tax workings that such a claim was made and effective tax liability was determined @ 10%. During the course of assessment proceedings, the said position has been duly explained and a specific claim was made before the AO in terms of services being rendered from Germany, no permanent establishment in India and to avail the beneficial tax rate of 10% as per Article 12 of India-German tax treaty and copy of tax residency certificate was also furnished. The AO has also recorded his findings stating that the assessee is a resident of Germany and provides all professional

consultancy from Germany only as and when required by Indian clients, however, the tax liability has been determined @ 40% under the Act as against 10% claimed by the assessee under Article 12 of India-German tax treaty. The said claim was thereafter reiterated before the ld CIT(A) and the Ld.CIT(A) has held that his powers stems from the original powers available with the AO (in the context of limited scrutiny) and therefore, the issue is not within his purview of examination and he declined to entertain such a claim.

14. As we have held above, the explanation of the assessee in context of notional claim of relief u/s 91, which was well within the scope of limited scrutiny, has to be seen and examined in context of its claim of beneficial tax rate under the tax treaty which has not happened in the instant case. In any case, where a legitimate claim is made in respect of which all material is available on record, the same deserve to be examined as per law and the same cannot be circumscribed by the limited powers of the AO in context of limited scrutiny and we find that similar view has been taken by the Coordinate Bench in case of Thakur Raj Kumar vs DCIT (ITA No. 766/Asr/2017 dated 29/11/2018) and the relevant findings read as under:

> *"7. We have heard the rival parties at length and perused the material on record. In response to the query on long term capital gain of Rs.6,58,423/- disclosed by the assessee on sale of land for Rs. 9 Lac, the assessee had filed details as per which the assessee originally purchased a piece of land for Rs.1,15,000/- in July, 2002 and that land was exchanged with the present piece of land with the assessed value of Rs.5,35,000/- as determined by the Sub-Registrar, Hoshiarpur, vide deed dated 02.12.2009. In the return of income, the assessee had computed the long term capital gain with date of purchase as 1st July, 2002 and costs of acquisition at Rs.1,15,000/-, however, during the assessment proceeding, the assessee filed the claim that the LTCG may be recomputed by substituting the cost of acquisition at Rs.5,35,000/- instead of Rs.1,15,000/- with corresponding change in date of acquisition, however, the Assessing Officer was of the view that the additional claim can not be accepted in the already running assessment proceedings and for this purpose only course of action lied with*

the assessee to file revised return of income u/s 139(5) of the Act as has been held by the Hon'ble Supreme Court in the case 'Goetz India Ltd. vs. CIT (2006) 157 Taxmann.com-1 (SC). Further the Assessing Officer also observed that the case being converted to the limited scrutiny case in the ITD/AST System, this office had no jurisdiction to discuss and pass judgment, on the Issues not covered within the reasons of scrutiny. The issue before us, as to whether the Assessing Officer can over reach his jurisdiction in the case of limited scrutiny cases as it was argued by the Ld. Counsel for the assessee that no doubt according to the Circular of CBDT No.7/2017 the scope of enquiry should be limited to verification of respective particulars only and the Assessing Officer shall issue the questionnaire and can make subsequent enquiry or verification only to the specific points on the basis of which the particular return has been selected for scrutiny, however, there is no bar to scrutinize the case on the request or claim of the assessee as the AO has to make correct assessment as it is trite to say that the AO has to make correct assessment u/s 143(3) and he is obliged to entertain the claim made during the proceedings and the tax cannot be levied on ignorance of law but income has to be computed in accordance with the provisions of law. Further, as it was argued that the department can not take advantage of ignorance of assessee to collect more tax than what legitimately due in view of the CBDT Circular No.14 dated 11.04.1955.

On the aforesaid consideration and analyzation, we are of the view that correct income has to be assessed and there is no bar for not entertaining the claim/issue raised by the assesee in limited scrutiny proceedings, if the same has been raised by the assessee, we clarify that according to the CBDT Instruction No.7/2017 certainly there is bar on the jurisdiction of the Assessing Officer to go beyond the subjected issue(s) under limited scrutiny cases, however, he is not restrained to adjudicate the issue(s) raised by the assessee. Hence, In view of the above, the case is remanded to the file of the Assessing Officer to adjudicate the claim of the assessee in accordance with law while giving proper opportunities of being heard to the assessee, and we further direct that the assessee shall not be allowed to raise any additional issue except as stated above."

15. In any case, being a legitimate claim, which has been reiterated by the assessee before the Ld.CIT(A) during the appellate proceedings, we find that the Ld.CIT(A) was well within his powers to examine such a claim and various authorities quoted at the Bar including the decision of the Hon'ble Bombay High Court in case of Pruthi Brokers and Shareholders *(supra)* support the case of the assessee.

16. In light of aforesaid discussion and in the entirety of facts and circumstances of the case, in absence of any specific finding recorded by the Ld.CIT(A), we deem it appropriate that the matter be set-aside to the file of the Ld.CIT(A) to examine the said claim afresh as per law after providing reasonable opportunity to the assessee.

17. Admittedly, as submitted by both parties, similar fact pattern exist in assessment year 2018-19 and similar contentions have been advanced, in light of the same, the matter in ITA No. 6030/Mum/2025 is also set-aside to the file of the Ld.CIT(A) in light of our findings and directions in ITA No. 6029/Mum/2025 pertaining to assessment year 2017-18.

18. In the result, both the appeals of the assessee are allowed for statistical purposes in light of aforesaid directions.

Order pronounced in the open court on 26-02-2026

Sd/-	Sd/-
(JUSTICE (RETD.) C.V. BHADANG) PRESIDENT	(VIKRAM SINGH YADAV) ACCOUNTANT MEMBER

Mumbai, Dated: 26-02-2026

TNMM

Copy to :

1) The Appellant
2) The Respondent
3) The CIT concerned
4) The D.R, ITAT, Mumbai
5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai