

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 692/JP/2019
निर्धारण वर्ष / Assessment Year :2014-15

Late Smt. Gurbachan Kaur, Through L/H Shri Dilpreet Singh Narang, B-902, Bestech Park View, SPA Next, Lane No. 1, Sector-67, Gurgaon, Haryana-122002	बनाम Vs.	Dy. Commissioner of Income Tax, Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AHGPK 0182 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Siddarth Ranka (Adv)
राजस्व की ओर से / Revenue by : Smt. Rooni Pal (DCIT)

सुनवाई की तारीख / Date of Hearing : 05/11/2019
उदघोषणा की तारीख / Date of Pronouncement : 05/12/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 15/03/2019 of Id. CIT(A)-I, Jaipur arising from the order passed U/s 154 of the Income Tax Act, 1961 (in short, the Act). The assessee has raised following grounds of appeal:

- "1. That in the facts and in circumstances of the case and in law, Id. A.O. has grossly erred in passing order U/s 154 of the Act after passing the assessment order U/s 143(3) of the Act which is without jurisdiction and barred by the law and thus is bad in law, is null and void and deserves to be quashed and set aside.

- 1.1 *That in the facts and in circumstances of the case and in law, Id. Lower authorities grossly erred in issuing notice u/s 154/155 of the Act dated 07/07/2017 on the basis of DVO report received subsequent to passing of assessment order u/s 143(3) of the Act dated 27/12/2016 and in passing order u/s 154 of the Act dated 22/08/2017.*
2. *That on the law and in the facts and circumstances of the case the Id. Lower authorities grossly erred in calculation long term capital gain at Rs. 75,25,770/- as against Rs. 14,71,577/- adopted by the assessee.*
- 2.1 *That on the law and in the facts and in the circumstances of the case the Id. Lower authorities grossly erred in adopting the fair market value of the property as at 01/04/1981 at Rs. 1,57,000/- as against Rs. 8,01,749/- adopted by the assessee.*
3. *The appellant craves leave to add, alter, modify or amend any ground on or before the date of hearing."*

The assessee has also raised additional ground, which reads as under:

"That the Id. A.O. grossly erred in referring the matter to the Id. Departmental Valuation Officer u/s 55A of the Act which was beyond the scope of Limited Scrutiny Assessment and thus entire action is bad in law, nullity and void and deserves to be quashed and set aside."

2. We have heard the Id counsel of the assessee as well as the Id DR and considered the relevant material on record for admission of the additional ground. The Id counsel of the assessee has submitted that the additional ground raised by the assessee is purely legal in character and goes to the root of the matter and therefore, the same may be admitted for adjudication on merits. In support of his contention, he has relied

upon the judgment of the Hon'ble Supreme Court in the case of NTPC Vs CIT (1998) 229 ITR 383 (SC).

3. On the other hand, the Id DR has objected to the admission of the additional ground and submitted that the assessee has not raised such objection either before the A.O. or before the Id. CIT(A).

4. Having considered the rival submissions and carefully perusal of the record we note that the assessee has not raised this issue of validity of the addition made by the A.O. on the issue of long term capital gain and particularly fair market value as on 01/4/1981 on the ground of jurisdiction of the A.O. beyond the Limited Scrutiny. The assessee has questioned the validity of the assessment of long term capital gain on the point that the assessment was taken up by the A.O. in CASS for limited scrutiny on the issue of deduction claimed by the assessee U/s 54 of the Act, large amount of sale consideration of the property reported in the return of income but less than the sale considered reported in the TDS return U/s 194IA of the Act and cash deposit in the savings bank account of the assessee, therefore, the issue of fair market value of the property as on 01/04/1981 was not within the scope of limited scrutiny which cannot be expanded without prior approval of the appropriate authority. Further the scope of the limited scrutiny cannot

be expanded while passing the order U/s 154 of the Act when the said issue was not within the scope of scrutiny assessment. Therefore, the issue raised in the additional ground is purely legal in nature and can be adjudicated on the basis of facts and material available on assessment record. Accordingly, we admit the additional ground for adjudication.

4.1 On merits, the Id. Counsel has submitted that the order passed by the A.O. U/s 154 of the Act is invalid as the same is beyond the scope of scrutiny assessment undertaken by the A.O. In support of his contention, he has relied upon the following decisions:

- (i) CBS International Projects Pvt. Ltd. Vs CIT dated 28/02/2019 passed by the Hon'ble ITAT, New Delhi.
- (ii) Sarvajit Bhatia Vs ITO, Faridabad dated 21/08/2019 passed by the Hon'ble ITAT, New Delhi.
- (iii) Shri Vijay Kumar Vs ITO, Patiala dated 12/09/2019 passed by ITAT, Chandigarh.
- (iv) Lokesh Sadashiv Shetty Vs ITO, Ahmednagar, dated 20/02/2019 passed by ITAT, Pune.

5. On the other hand, the Id DR has submitted that when the scrutiny assessment was taken up on the issue of sale consideration of the property sold by the assessee as well as the deductions claimed by

the assessee under Chapter-IV of the Act then the determination of the fair market value of the property is very much within the scope of scrutiny assessment.

6. We have considered the rival submissions as well as relevant material on record. There is no dispute that the case of the assessee was selected for limited scrutiny under CASS and the scope of limited scrutiny is discernable from the notice issued U/s 142(1) dated 07/04/2016 as under:

"Specific queries raised, for which information to be furnished:

<i>Your ITR has been selected for LIMITED scrutiny under CASS for the following reasons:</i>	
<i>1</i>	<i>Large deduction claimed u/s 54B, 54C, 54D, 54G, 54GA</i>
<i>2</i>	<i>Large value sale of consideration of property in ITR is less than sale consideration of property reported in TDS return under section 194IA</i>
<i>3</i>	<i>Large cash deposits in savings bank account and assessee has also transferred one or more property(ies) during the year.</i>

Thus, the A.O. raised specific queries under limited scrutiny in respect of three points. There was no query raised about the fair market value of the property in question as on 01/04/1981, therefore, the said issue cannot be treated as part of the limited scrutiny under CASS when none of the queries raised under the scrutiny relating to the computation of the capital gain but all are regarding deduction claimed under Chapter IV and particularly U/s 54 of the Act and the variation of the sale consideration shown in the ITR and TDS return as well as the deposits

made in the bank account. Thus, we find that the issue which was taken up by the A.O. while passing the order U/s 154 of the Act determining the fair market value of the property as on 01/04/1981 was not within the scope of scrutiny assessment.

7. Once the issue taken up by the A.O. was beyond the scope of limited scrutiny under CASS then until and unless the limited scrutiny is converted into comprehensive scrutiny by taking an approval of the competent authority, the said issue of determination of fair market value of the property as on 01/04/1081 is beyond the jurisdiction of the A.O. under the limited scrutiny. Since this issue was not raised by the assessee before the lower authorities and it requires verification of the assessment record to ascertain whether the A.O. obtained the approval of the competent authority for conversion of the limited scrutiny to the comprehensive scrutiny. If the issue of determination of fair market value as on 01/04/1981 is taken up by the A.O. without expansion or conversion of the limited scrutiny to comprehensive scrutiny then such act of the A.O. is beyond his jurisdiction and the order passed by the A.O. U/s 154 r.w.s 155(15) of the Act would be illegal and void ab initio. This Tribunal has taken a consistent view on this issue in a series of decisions relied upon by the Id. Counsel for the assessee. In the case of

CBS International Projects P. Ltd. Vs CIT (supra), the Delhi Benches of the Tribunal has considered relevant instructions issued by the CBDT for limited scrutiny under CASS and held in para 13 to 16 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 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 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 26th 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 mismatch regarding

It has come to the notice of the Board that during the scrutiny assessment proceedings some of the AOs are routinely calling 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 tax aver 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 sect on 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 15th 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 14 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 15 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."

Thus, if the A.O. has taken up the issue of determining fair market value of the property in question as on 01/4/1981 without converting the limited scrutiny to comprehensive scrutiny by taking the prior approval of the competent authority then the said order passed by the A.O. will be nullity as beyond his jurisdiction. The AO neither in the assessment order nor in the assessment proceedings sheet has mentioned about any proposal of converting the limited scrutiny to comprehensive scrutiny and consequential approval of the Competent Authority being Principal CIT/DIT. The Id. Counsel for the assessee has produced the certified copy of the assessment proceedings sheet which does not contain any such proposal of the AO for expanding the limited scrutiny to complete scrutiny. Further, the revenue has also not produced anything to show that the AO has obtained the necessary approval from the Competent

Authority for conversion of the limited scrutiny to comprehensive scrutiny. Accordingly, the issue which is taken up by the AO in the proceedings under section 154 is illegal and void being beyond his jurisdiction to frame the limited scrutiny assessment. Accordingly, we set aside and quash the order passed by the AO under section 154 of the Act.

8. Since we have quashed the order passed by the AO under section 154 of the Act for want of his jurisdiction on this issue, therefore, we do not propose to take up the other grounds raised by the assessee in this appeal.

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

Order pronounced in the open court on 5th December, 2019.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 5th December, 2019

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Late Smt. Gurbachan Kaur, through L/H Shri Dilpreet Singh Narang, Gurgaon, Haryana.
2. प्रत्यर्थी / The Respondent- The D.C.I.T., Circle-2, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur

6. गार्ड फाईल / Guard File (ITA No. 692/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar