

CONCEPT OF LIMITED SCRUTINY

&

E ASSESSMENT

UNDER INCOME TAX ACT 1961

PART A - CONCEPT OF LIMITED SCRUTINY UNDER INCOME TAX 1961

1. Concept of Limited Scrutiny: Law prior to 1st June 2003

- The concept of limited scrutiny was introduced in 143(2)(i) in 1-6-2002 where separate notice was to be issued for limited scrutiny
*“(i) where he has reason to believe that any claim of loss, exemption, deduction, allowance or relief made in the return is inadmissible, serve on the assessee a **notice specifying particulars of such claim of loss, exemption, deduction, allowance or relief** and require him, on a date to be specified therein to produce, or cause to be produced, any evidence or particulars specified therein or on which the assessee may rely, in support of such claim:”*
- However the said provision was withdrawn from 1st June 2003 and the concept of limited Scrutiny was done away with.

Income-tax Officer, 1(2)(4), Mumbai VS Pericles Foods (P.) Ltd [2007] 17 SOT 602 (MUM.)

In this case the issue was in limited scrutiny can the head of income be changed? The ITAT held that the AO could either allow or disallow the deduction. He could not change the head of income.

Bholanath R. Shukla VS ITO WD 2(1) THANE 118 ITD 552 (Mumbai)

In this case the contention raised by the Department was that once notice was issued u/s 143(2)(i) the AO could then covert the assessment to full scrutiny by issue of notice u/s 143(2)(ii). The contention was rejected by the ITAT and held that the notice under 143(2)(i)/(ii) had to be issued within the period of 12 months from the end of assessment year.

2. CBDT instruction No.225/26/2006 dated 23.05.2007

- As has already been clarified vide letter of even number dt. 25th October,2006 scrutiny in cases of Assessment Year 2005-06 selected specifically on the basis of information received through AIR returns should be limited to only that aspect.
- However, **if the Assessing Officer feels that some other areas are required to be looked into he may, with the approval of the ACIT/JCIT range, take up the case for wider scrutiny.**
- Such cases should be monitored by the ACIT/JCIT

Impact of the Instruction

- The AO was not always issuing notices specifying the scrutiny was under AIR /CASS.
- The AO was directly reporting to the JCIT and hence the approval was only a formality.

3. F.No.225/26/2006-ITA-II(Pt.) 8th Sept 2010

“Scope of enquiry in the scrutiny cases selected only on the basis of information received through the AIR returns”

- It has been decided that the scrutiny of such cases would be limited only to the aspects of information received through AIR.
- However, a case may be taken up for wider scrutiny with the approval of the administrative Commissioner, where it is felt that apart from the AIR information there is a potential escapement of income more than Rs.10 lakhs.
- It has also been decided that in all the cases which are picked up for scrutiny only on the basis of AIR information, the notice under Section 143(2) of the Income Tax Act, 1961 should clearly be stamped with “AIR case.”

M/s. Nitin Killawala & Associates - Mumbai ITAT

- The case was selected for scrutiny under CASS and notice under section 143(2) was issued to the assessee.
- The assessee was required to furnish the details/reconciliation of the items mentioned in the AIR information.
- The AO, however, widened the area of scrutiny of the assessment and added travelling and education expenses.
- No permission taken for widening of the scope of scrutiny and notice was issued on 20-8-09.
- Nothing brought on record to show that the permission was taken from JCIT/ ADIT.
- Not following procedure laid down in circular - Assessment Null and Void

4. Instruction No. 7/2014 dt 26-9-2014

- CBDT accepted that there was harassment of assessee by AO routinely calling for information.
- Instruction issued under 119 in suppression of all other instruction on the subject.
- The cases selected for Scrutiny for F. Y. 2014-15 for CASS or on the basis of AIR information then verification to be limited to this specific aspect only.
- The notices u/s 143(2) to specify that case is reopened for CASS /AIR information. Notices u/s 142(1) to ask only for the specific information .
- The enhancement of scope to take place only if the escapement of income above 10 lacs (metro)/ 5 lacs (Non metro) with the permission of Pr.CIT/DIT.

5. INSTRUCTION NO.20/2015 DATED 29-12-2015

- Clarification for earlier instruction that the said was applicable to CASS 2014 and only to cases selected for scrutiny under CASS only on the parameter(s) of AIR/CIB/26AS data.
- 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.
- In cases under scrutiny for verification of AIR/CIB/26AS data, the Assessing Officer has to intimate the reason for selection
- 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').
- Procedure to be followed
 - The AO shall inform assessee about limited scrutiny
 - The AO shall restrict the inquiries to the issue
 - The cases shall be completed expeditiously
 - The AO to enhance the scope of enquiry will take permission from PR.CIT /CIT (same monetary limits)
- **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.**
- **The contents of this Instruction should be immediately brought to the notice of all concerned for strict compliance.**

6. Instruction No. 5/2016

- **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’. Monetary limit and permission norms to apply as before.**
- **Further the AO to ensure**
 - **there exists credible material or information available on record for forming such view**
 - **this reasonable view should not be based on mere suspicion, conjecture or unreliable source;**
 - **there must be a direct nexus between the available material and formation of such view.**
- **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'. Further the AO to intimate assessee about the change.

- 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.
- **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.
- Instructions apply to the cases selected under CASS 2015 which are pending scrutiny cases as well as cases selected/being selected under the CASS 2016.

7. F.No.225/162/2016/ITA.II - 11th of July, 2016

- Central Board of Direct Taxes, with approval of the Revenue Secretary, has decided to modify notice under section 143(2) of the Income-tax Act. Hence forth there will be three type of notices.
 - Limited Scrutiny
 - Complete Scrutiny
 - Manual Scrutiny(formats in word separate file)
- The notices specifically provide that the reasons be mentioned. The notice for A Y 15-16 have been issued by officers in the above formats.

8. F.No.225/180/2017/ITA.II

**F.No.225/180/2017/ITA.II
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
New Delhi
** ** ***

To

**All Pr. Chief-Commissioners of Income-tax/Chief-Commissioners of
Income-tax**

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

**Guidelines for selection of cases for scrutiny during the Financial Year
2017-2018-regd.-**

1. In supersession of earlier Instructions on the above subject, the Board hereby lays down the following procedure and criteria for compulsory manual selection of returns/cases requiring scrutiny during the financial-year 2017-2018:-

- (i) Cases involving addition in an earlier assessment year(s) on a recurring issue of law or fact of following amounts:
- in excess of Rs. 25 lakhs in eight metro charges at Ahmedabad, Bengaluru, Chennai, Delhi, Hyderabad, Kolkata, Mumbai and Pune, while at other charges, quantum of such addition should exceed Rs. 10 lakhs;
 - for transfer pricing cases, quantum of such addition should exceed Rs. 10 crore and where:
 - a) such an addition in assessment has become final as no further appeal was/has been filed; or

- b) such an addition has been confirmed at any stage of appellate process in favour of revenue and assessee has not filed further appeal; or
 - c) such an addition has been confirmed at 1st appeal stage in favour of revenue or subsequently and further appeal of assessee is pending.
- (ii) All assessments pertaining to Survey under section 133A of the Income-tax Act, 1961 ('Act') excluding those cases where books of accounts, documents etc. were not impounded and returned income [excluding any disclosure made during the Survey) is not less than returned income of preceding assessment year. However, where the assessee retracts from disclosure made during the Survey, such cases will not be covered by this exclusion.
 - (iii) Assessments in search and seizure cases to be made under section(s) 158B, 158BC, 158BD, 153A & 153C read with section 143[3] of the Act and also for the returns filed for the assessment year relevant to the previous year in which authorization for search and seizure was executed u/s 132 or 132A of the Act.
 - (iv) Return filed in response to notice u/s 148 of the Act.
 - (v) Cases where registration/approval under various sections of the Act such as 12A, 35(1)(ii)/(iii), 10(23C) etc. of the Act have not been granted or have been cancelled/withdrawn by the competent authority, yet the assessee has been claiming tax-exemption/deduction in the return. However, where such order of withdrawal of registration/approval has been reversed/set-aside in appellate proceedings, those cases will not be selected under this clause.
 - (vi) Cases in respect of which specific and verifiable information pointing out tax-evasion is given by any Government

Department/Authority. However, before selecting a case for scrutiny under this criterion, Assessing Officer shall take prior administrative approval from the concerned jurisdictional Pr. CIT/Pr. DIT/CIT/DIT.

- 2.** Computer Aided Scrutiny Selection (CASS): Cases are also being selected under CASS-2017 on the basis of broad based selection filters and in a non-discretionary manner in two categories viz. Limited Scrutiny & Complete Scrutiny. List of such cases is being separately intimated by Pr. DGIT (Systems) to the concerned jurisdictional authorities for further action in these cases.
- 3.** These instructions may be brought to the notice of all concerned for necessary compliance.

PART B – E – ASSESSMENT UNDER INCOME TAX ACT

1961

1. E-Assessment

- CBDT vide letter no. F. No. 225/267/2015-ITA-II, dated October 19, 2015 started a pilot project for concept of using email-based communication for paperless scrutiny proceedings.
- It was decided to launch a pilot project, comprising non corporate taxpayers in 5 cities, namely, Delhi, Mumbai, Bengaluru, Ahmedabad and Chennai. Scope has subsequently been widened to include two more cities.
- Initially it was decided to identify a few taxpayers and test the operational difficulties for cases selected under CASS/ AIR / CIB information.
- The AO with the consent of these tax payers to conduct a e-hearing from his official mail with the assessee through his email ID provided by assessee.

2. Notice under E- Assessment

- Tax officer shall email the signed and scanned notice/ questionnaire in PDF format using his designation email address. (Official designation based email address under the domain @incometax.gov.in)
- The email will be sent to the taxpayer's email address as provided in his/ her income-tax return of the relevant tax year or in the last income tax return furnished. Alternatively, the taxpayer can inform in writing where any other email address should be used for electronic communication.
- The subject line of the email sent by the tax officer should be in the format - *(PAN) - (Assessment Year) - Notice u/s - _____ - (Serial no. of notice)*

3. Submissions under E-Assessments

- The taxpayer while responding, also needs to mention the subject in the format - (PAN) - (Assessment Year) - Reply - (Serial no. of notice)
- Response should be submitted in PDF format as attachments and the size of attachments in a single email cannot exceed 10MB.
- Where the size of attachment exceeds 10MB, the taxpayer shall split the attachment and send in as many emails as may be required to adhere to the 10MB size limit. However, in each such attachment, taxpayer is required to clarify the corresponding notice number and date in the footer to which the attachment relates, and also number the pages in continuation to ensure proper linkage.
- The mails of AO and the assessee to be stored at to *eassessment@incometax.gov.in* for audit trail purposes.

4. Delivery failure of E-Mails

Email Delivery Failure – Tax Officer

- The tax payer has an option to provide alternate email address which the tax officer can use.
- The tax officers use email address available with the tax authorities pertaining to the taxpayer.
- In case the tax officer is unable to send notice due to technical reasons including mail delivery failure, inbox full, mail box full etc., such notice can be sent by any other valid prescribed valid mode
- The tax officer is required to forward the copy of email error message to eassessment@incometax.gov.in and the subject line should contain (PAN) – (Assessment Year) -Error

Email Delivery Failure – Tax Payer

- The taxpayer can provide alternate email address to the authorities of income tax
- In case if the taxpayer is unable to send the response by email owing to technical reasons, the response can be submitted physically
- With the response, a copy of email error message has to be forwarded to eassessment@incometax.gov.in with the subject line as (PAN) – (Assessment Year) – Error.

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5. Passing of Order and Documentation of Record of Assessment

- Once the scrutiny is completed, the tax officer shall pass the order and email it in PDF format to the taxpayer.
- The record of all the email communications will be available to the taxpayer under "My Account" and can be accessed through login on efiling portal, namely <http://incometaxindiaefiling.gov.in>

6. E-Assessments is optional

Letter [F.No. 225/162/2016/ITA.II]Dated 11-7-2016

“5. The assessment proceeding in your case is proposed to be conducted through email based communication. The email provided in the said return 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 of 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.”**