HYDERABAD BRANCH OF SIRC OF ICAI

SEMINAR ON DIRECT TAXES

DELIBERATIONS ON SECTIONS 68, 69, 69A, 69B, 69C & 115BBE OF THE INCOME TAX ACT

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SECTION 68 – CASH CREDITS

Conditions for invoking the provisions

- Any sum may be charged to tax under this section if the following are satisfied

  (1) Assessee has maintained books

  (2) The sum is found credited in the books maintained by the assessee during the year and

  (3) Assessee offers no explanation on the nature and source of such sum or the Assessing Officer is not satisfied with the explanation offered by the assessee

- The first proviso deals with loans, borrowings or any such amount by whatever name called. **(Introduced vide Finance Act, 2022 w.e.f. 01.04.2023)**

- The second proviso deals with share application money, share capital, share premium, or any such similar amount received by companies which are not companies in which public are substantially interested.

- In addition to conditions (1) and (2) above, the explanation in respect of credits received in the form of loans or borrowings or share application, share capital and share premium would be deemed to be satisfactory only if

  (1) The person in whose name the credit is recorded in the books of the assessee explains the nature and source for the sum and

  (2) The Assessing Officer is satisfied by such explanation offered by the person

- If the credit is or share application, share capital and share premium, the proviso is not applicable unless the person in whose name the credit is recorded is a resident

- The third proviso excludes the applicability of the first and second provisos if the person in whose name the credit is recorded is a venture capital fund or venture capital company referred to in section 10(23FB)

- The word used in this section is “may” and not “shall” which means that it is not obligatory on the part of the Assessing Officer to treat such unexplained credit as income in every case.

  CIT v Smt.P.K.Noorjahan [1999] 237 ITR 570 (SC)
  Pr. CIT v Late Rama Shankar Yadav 2017 (8) TMI 858 (All-HC)

- Addition cannot be made where assessee has given explanation for the credits and where the same is not controverted by the Assessing Officer

  CIT v Subodh Varshney in ITA No 50 of 2015 (Madhya Pradesh High Court)

- Even if the assessee is not able to explain to the satisfaction of the Assessing Officer, addition cannot be made if the transaction is genuine. Assessing Officer ought to conduct proper and adequate enquiry.

  PCIT v N.C.Cables Ltd. [2017] 391 ITR 11 (Del)

Burden of proof on the Assessee

- The initial burden of proof is on the assessee

  Kale Khan Mohammed Hanif v CIT [1963] 50 ITR 1 (SC)

- Obligation on the part of the assessee is to prove

  (a) The identity of the creditor
  (b) The genuineness of the transaction
  (c) The credit worthiness of the creditor

- At the first stage the burden of proof lies on the assessee. It is the obligation of the assessee to prove the above to the satisfaction of the Assessing Officer

- However the obligation of the assessee is confined only to the above. It is not the burden of the assessee to prove the genuineness of the transactions between his creditor and sub-creditors nor is it the burden of the assessee to prove that the sub-creditor had the creditworthiness to advance the cash credit to the creditor from whom the cash credit has been, eventually, received by the assessee.

  CIT v Kamdhenu Steel and Alloys Ltd. & Ors. [2014] 361 ITR 220 (Del)

- Creditor's creditworthiness has to be judged based on the transactions that took place between the assessee and the creditor. It is not obligatory on the part of the assessee to find out the source of money of his creditor or of the genuineness of the transactions, which took between the creditor and sub-creditor and/or creditworthiness of the sub-creditors.

- However, the Assessing Officer need not confine his inquiries within the transactions, which took place between the assessee and his creditor, but that the same may be extended to the transactions, which have taken place between the creditor and his sub-creditor.

  Nemi Chand Kothari v CIT [2003] 264 ITR 254 (Gau)

- Where the primary burden of proof which lay on the assessee was discharged, the assessee could not have been required to prove the source of source.

  - ***M/s Kesharwani Sheetalaya Sahsaon v CIT [2020] 116 taxmann.com 382 (All)***
  - ***S.Hastimal v CIT [1963] 49 ITR 273 (Mad)***
  - ***Mehta Parikh & Co. v CIT [1956] 30 ITR 181 (SC)***
  - ***CIT* v. *Jauharimal Goel [2005] 147 taxman 448 (All)***
  - ***Tolaram Daga v. CIT [1966] 59 ITR 632 (Assam)***
  - ***CIT v. Daulat Ram Rawatmull [1973] 87 ITR 349 (SC)***
  - ***Sarogi Credit Corporation v. CIT [1976] 103 ITR 344 (Pat)***
  - ***CIT* v. *Ram Narain Goel* [1997] *92 Taxman 259 (P&H)***

- It is not the responsibility of the assessee to show that the credit has come from the accounted sources of the lender.

  CIT* v *Metachem Industries [2000] 245 ITR 160 (MP)

<u>It is to be noted that the above case laws are not applicable to cases that would fall under the first and second provisos to section 68.</u>

Onus on the Assessing Officer and shifting of the same back to assessee

- Simple disclosure of certain materials will not help the assessee to discharge the burden of proving the credits u/s.68. Until the onus is *prima facie* discharged by the assessee, it never shifts on the Department.

- In order to ascertain whether *prima facie* onus has or has not been discharged, the Assessing Officer has a duty to enquire into the materials so disclosed.

- The assessee may seek assistance of section 131 of the Act for the purpose of proving its own case.

- If in the process, in order to secure attendance of a person a request is made by the assessee to the Assessing Officer for issuing of summons, it is incumbent on the Assessing Officer to issue such summons in order to enable the assessee to avail of the opportunity provided by the statute, otherwise the Assessing Officer would be denying the opportunity provided to the assessee, in-built in section 68.

  CIT v. Kamdhenu Vyapar Co. Ltd. [2003] 263 ITR 692 (Cal)

- Assessing Officer cannot make additions merely for the reason that the creditor / donor has not appeared when called for in the absence of any other evidence to prove that the credit is not genuine.

  Atmaram J. Manghimalani (HUF) v ITO 67 ITD 289 (Mum)

- The power of the Assessing Officer is not absolute to make an addition u/s.68. It is subject to his satisfaction when an explanation is offered by the assessee. The power would be absolute only where the assessee offers no explanation.

- Where the assessee explains the nature and source of the credit, it is the duty of the Assessing Officer to form an opinion as to whether the explanation is satisfactory or not. If the conclusion arrived at by the Assessing Officer based on the explanation offered by the assessee is adverse, then the Assessing Officer has to intimate the same to the assessee.

- When such information or intimation is received by the assessee, the onus shifts on the assessee.

- The assessee may furnish further explanation or information to support its contention and the Assessing Officer is bound to examine the same and form his final opinion and pass an appropriate order.

  Hindusthan Tea Trading Co. Ltd. v CIT [2003] 263 ITR 289 (Cal)

ISSUES

- **Year of addition**

  - ✓ The section provides that the sum so credited may be charged to income tax as the income of the assessee of that previous year. The chargeability to tax in respect of unexplained credits would be only in the year in which the credit first appears in the books of account of the assessee. The Hon'ble High Court held that since the credits did not relate to the impugned year in which the addition was made, the same was liable to be deleted only on this ground.

CIT v Prameshwar Bohra [2008] 301 ITR 404 (Raj)

- **Whether scope of section 68 is confined to cash credits?**

  - ✓ Even though the heading of section 68 of the Act refers to 'Cash Credit', the body of the section refers to any sum found credited and thus the section is not confined merely to credits in actual 'cash'. Other credits by way of liabilities also require explanation as stipulated under section 68 so that when they are not satisfactorily explained, they are bound to be added.

    VISP (P) Ltd. v CIT [2004] 265 ITR 202 (MP)

- **Whether section 68 cannot be invoked if books are not maintained by the assessee?**

  - ✓ Where no books of account is maintained by the assessee then the addition cannot be made u/s.68. Existence of books of account is a condition precedent for invoking the power, discharging the burden is a subsequent condition.

    Anand Ram Raitani v CIT [1997] 223 ITR 544 (Gau)

  - ✓ As per section 68 only amounts that are found credited in the books of account of the asessee during the year can be added. Loans received in the earlier years cannot be added.

    ITO v. Nasir Khan J. Mahadik [2012] 134 ITD 166 (Mum)

  - ✓ Where assessee was engaged in business and required to maintain books of accounts, not doing so would not disentitle the Department from invoking section 68. Assessee cannot take advantage of his own wrong.

    Arunkumar J. Muchhala v CIT 399 ITR 256 (Bom)

  - ✓ The High Court held that the assessee has admitted that books were maintained but that they have not been produced before the Assessing Officer. Addition u/s.68 sustained.

    Sudhir Kumar Sharma HUF v CIT [2014] 46 taxmann.com 340 (P&H-HC). SLP dismissed in [2016] 69 taxmann.com 219 (SC)

- ***What can be considered books of accounts?***

  Section 2(12A) w.e.f. 01.06.2001 - "books or books of account" includes ledgers, day books, cash books, account books and other books, whether kept in the written form or as print-outs of data stored in a floppy, disc, tape or any other form of electro-magnetic data storage device

- ✓ Bank passbook supplied by the bank to the assessee is not a book maintained by the assessee and additions cannot be made u/s.68 based on entries in the bank pass book.

  CIT v Bhaichand H.Gandhi [1983] 141 ITR 67 (Bom)

- ✓ Where cash credits are recorded in the rough cash book of the assessee and there is no proper explanation, section 68 will apply and the credit amount will be assessable as income of the assessee.

  Haji Nazir Hussain v ITO [2004] 271 ITR (AT) 14 (Del)*.*

  However loose sheets of paper are not books.

  Central Bureau of Investigation v V.C. Shukla [1998] 3 SCC 410
  Common Cause (A Registered Society) v UOI (2017) 394 ITR 220

- ✓ Profit and loss account cannot be considered to be books of account

  CIT v Taj Borewells [2007] 291 ITR 232 (Mad)

- **If books of account rejected & tax is levied on estimated income, can Assessing Officer make addition for cash credit u/s.68?**

  - ✓ Where a particular business income of the assessee has been estimated and determined, and in such a case certain cash credits are found, the Assessing Officer may be precluded from adding the said unexplained cash credit as undisclosed income from the business, the income of which was determined on estimate basis. But where the unexplained cash credits are not referable to the business income of the assessee which was estimated, the Assessing Officer is not precluded from treating the unexplained cash credit as income from any other source.

    CIT v Maduri Rajaiahgari Kistaiah [1979] 120 ITR 294 (AP)

  - ✓ It was held that adding up extra estimated profits as well as the amounts of cash credits was open to authorities only when there was material to show that assessee carried on an independent business apart from the business for which assessment was being made.

    Ramcharitar Ram Harihar Prasad v CIT [1953] 23 ITR 301 (Pat)

- **Preponderance of Probability test to considered in evaluating explanation of assessee and is sufficient to discharge onus**

    ✓ Amount withdrawn for Earnest Money for property was redeposited. High Court held explanation given was plausible and not fanciful. Due regard and latitude to be given to human conduct and behavior.

    Jaya Aggarwal v ITO [2018] 92 taxmann.com 108 (Del)

    The following cases may be referred to in this regard.

    Sumati Dayal v CIT [1995] 214 ITR 801 (SC)
    CIT v V.P.Mohanakala [2007] 291 ITR 278 (SC)
    CIT v Durga Prasad More [1971] 82 ITR 540 (SC)

➢ **Peak credit and section 68**

For adjudicating upon the plea of peak credit the factual foundation has to be laid by the assessee. He has to own all cash credit entries in the books of account and only thereafter can the question of peak credit be raised.

Bhaiyalal Shyam Bihari v CIT (2005) 276 ITR 38 (All)

"If the assessee as a self-confessed accommodation entry provider wanted to avail the benefit of the 'peak credit', he had to make a clean breast of all the facts within his knowledge concerning the credit entries in the accounts. He has to explain with sufficient detail the source of all the deposits in his accounts as well as the corresponding destination of all payments from the accounts. The Assessee should be able to show that money has been transferred through banking channels from the bank account of creditors to the bank account of the assessee, the identity of the creditors and that the money paid from the accounts of the assessee has returned to the bank accounts of the creditors. The Assessee has to discharge the primary onus of disclosure in this regard."

CIT v D.K.Garg [2018] 404 ITR 757 (Del)

➢ **Position in the case of Entry-Provider**

✓ When assessee is admittedly an entry provider, the amount credited cannot be said to be income of the assessee. Accordingly, section 68 will not apply in such cases. It would be appropriate to tax the income of the assessee which is the commission income from business of providing such accommodation entry.

PCIT v. Alag Securities P. Ltd. [2020] 425 ITR 658 (Bom)

- **What if customer denies sales?**

  - ✓ Assessee states that sales were made to one customer but customer denies purchases. Sales made in open market. Addition made u/s. 68 deleted by Tribunal in absence of any discrepancies in accounts / audit report /stock records.

    Bansal Rice Mills v. ITO [2001] 78 ITD 326 (Chd.)(TM)

- **Cash Deposited – Joint Bank Accounts**

  - ✓ Assessee claimed that the bank account belonged to his maternal grandfather and his name was added only for assistance to his old grandfather. Could not produce evidence to show that the grandfather had substantial source of income to justify huge amount deposited in bank. Addition confirmed in the hands of the assessee.

    Praveen Kumar v CIT [2019] 415 ITR 241 (P & H - HC)

- **Realization from debtor, Sales Proceeds – Whether section 68 applicable?**

  - ✓ It is neither necessary nor desirable to give examples to indicate under what circumstance section 68 of the Act can or cannot be invoked. What is clear, however, is that section 68 clearly permits an Income-tax Officer to make enquiries with regard to the nature and source of any or all the sums credited in the books of account of the company irrespective of the nomenclature or the source indicated by the assessee. In other words, the truthfulness of the assertion of the assessee regarding the nature and the source of the credit in its books of account can be gone into by the Income-tax Officer.

    CIT v Sophia Finance Ltd. [1994] 205 ITR 98 (Del.)(FB)

  - ✓ The argument that section 68 is not applicable where an asset is sold and the sale proceeds are credited in the books of account, cannot be accepted having regard to the settled legal position that it is always for the assessee to explain the nature and source of the sums credited in his books of account. The section does not recognize any distinction between amounts credited in the books as gifts or loans or pure receipts, on the one hand, and amounts credited as sale proceeds, on the other. In either case, when called upon, the assessee is bound to explain the nature and source of the amounts credited.

    Manoj Aggarwal v. DCIT [2008] 113 ITD 377 (Del.)(SB)

- ✓ ***Rachman Springs P. Ltd. v. DCIT [1995] 55 ITD 159 (Del)*** – View taken that realization from debtors is reduction of assets and not subjected to section 68

- **Telescoping benefit to be granted**

  - ✓ Additions were made to the trading results as also amounts representing cash credits were added as income from undisclosed sources. The Tribunal found that the additions in trading results would cover the amount of cash credits as also substantial additions had been made in earlier years, it was held that the Tribunal was justified in deleting the addition on account of cash credits.

    CIT v Tyaryamal Balchand [1987] 165 ITR 453 (Raj)

- **May be charged v Deemed to be income**

  - ✓ In section 68 the provisions are worded in such a manner that the "sum so credited **may be charged to income** as the income of the assessee". However in section 69 the provisions are worded in such a manner that the "value of investments **may be deemed to be the income** of the assessee" It has been similarly worded in sections 69A, 69B, 69C and 69D also

  - ✓ Under the section 68 an addition can be made only if any sum is found credited in the books of account maintained by the assessee. Hence if the source for the credit is not proved to the satisfaction of the Assessing Officer the Assessing Officer may charge the same as income since it is credited in the books of account of the assessee.

  - ✓ However in sections 69 to 69D the credits / debit are unexplained and that they are not recorded in the books of account maintained by the assessee. Since they are not recorded in the books they cannot be brought to tax as such and hence a deeming fiction is created to bring those sums as income of the assesse.

- ➢ **Interplay between section 68 and 44AD**

  - ✓ Once under the special provision, exemption from maintenance of books of account has been provided and presumptive tax at the rate of 8 per cent of the gross receipt itself is the basis for determining the taxable income, the assessee is not under any obligation to explain individual entry of cash deposit in the bank, unless such entry has no nexus with the gross receipts.

    CIT v. Surinder Pal Anand [2011] 242 CTR 61 (P & H - HC)

- **Interplay between section 68 and section 56**

  - ✓ Can gifts from non-relatives be taxed u/s.68? Whether section 68 is invocable once assessee has offered an amount as gift from non-relative?

    Section 56 is a computation section for IFOS whereas section 68 applies at the stage of aggregation of income. If General tests of section 68 i.e. Identity – capacity – genuineness is established then 68 will be avoided and 56 can independently apply. If not – sec. 68 will apply and then sec. 56 cannot be applied since the presumption is that it is the assessee's own money

  - ✓ Judgment in the context of section 56(2)(viib) – If assessee able to establish the credit genuine, section 68 will not apply and only the share premium will be taxed u/s.56(2)(viib). Otherwise entire amount of receipt will be subjected to section 68 of the Act.

    Sunrise Academy of Medical Specialities (India) (P) Ltd. v ITO [2018] 409 ITR 109 (Ker)

DEMONETIZATION

- **Deposit from earlier withdrawal to be accepted / opening cash balance to be accepted**

  - ✓ While adding the deposits in bank account during the demonetization period the Assessing Officer should consider the available cash balance as on 08.11.2016 and should accept earlier withdrawal (without questioning the time gap) as source for the deposits made, where the Assessing Officer has not brought any evidence on record to show that earlier withdrawls were used for any other purpose

    CIT v Kulwant Rai [2007] 291 ITR 36 (Del)
    ACIT v Baldev Raj Charla [2009] 121 TTJ 366 (Del)
    Gordhan v ITO in ITA No. 811/Del/2015 dated 19.10.2015,
    DCIT v Nikhil Nanda in ITA No.3644/Del/2013 dated 18.03.2015

  - ✓ Frequent withdrawal and deposit of his own money was justified as the same was not prohibited under any law.

    DCIT v Smt.Veena Awasthi in ITA No.215/LKW/2016

  - ✓ Simply because after the period of demonetization, that is, 08.11.2016, certain amount of cash has been deposited in the bank account, it does not mean that the cash-in-hand as on 31.3.2015 and 31.03.2016, duly

shown in the balance sheet and disclosed to the department in the respective income tax return filed much earlier, is unexplained

Nita Taneja v ITO in ITA No.4958/Del/2018

- **Acceptance of demonetized currency does not automatically make it unaccounted money under Income Tax Act**

  - ✓ RBI Act nowhere states that a person cannot deal in illegal tender. Section 28 places restriction only on banks to issue lost, stolen, mutilated or imperfect currency note and section 39 states banks to issue in exchange of coin, currency notes in legal tender.

  - ✓ According to SBN (Cessation of Liabilities) Act, 2017, [which has received the assent of the President on 27.02.2017], on and from the appointed day i.e. 31.12.2016, no person shall, knowingly or voluntarily, hold, transfer or receive any specified bank note.

In the FAQ dated 26.05.2017 Question number 2 reads as follows:

2. What is this scheme?

The legal tender character of the bank notes in denominations of ₹ 500 and ₹ 1000 issued by the Reserve Bank of India till November 8, 2016 (hereinafter referred to as Specified Bank Notes) stands withdrawn. In consequence thereof these Bank Notes cannot be used for transacting business and/or store of value for future usage. The Specified Bank Notes (SBNs) were allowed to be exchanged for value at RBI Offices till December 30, 2016 and till November 25, 2016 at bank branches/Post Offices and deposited at any of the bank branches of commercial banks/Regional Rural Banks/Co-operative banks (only Urban Co-operative Banks and State Co-operative Banks) or at any Head Post Office or Sub-Post Office during the period from November 10, 2016 to December 30, 2016.

  - ✓ **FAQ given on 26.05.2017 clarifies that Specified Bank Notes cannot be used for transacting business and / or store of value for future usage. Can a subsequent clarification affect the transactions already done during the Demon Period**

  - ✓ SBNs were allowed from 08.11.2016 to 31.12.2016 as legal tender and hence can be journalized in books

  - ✓ Until 30.12.2016, the banks were allowed to accept old currency notes in exchange of new currency for the same value.

  - ✓ The fact that the banks were accepting old currency notes and in return were issuing new notes of the same value, itself indicates that deposits made until the end of demonetization is not illegal and that the same carries value.

- ✓ During such period, legal tender even referred to torn or soiled notes deposited by its customers in exchange of new currency.

- ✓ Mere acceptance of demonetized currency does not automatically make it unaccounted money under Income Tax Act.

- ✓ Unless the deposits are in the nature of unaccounted money / unaccounted investment u/s.68 / 69A the deposit of demonetized currency cannot be treated as unexplained money under the provisions of Income Tax Act.

  Wilfred Educational Society v PCIT [2019] 71 ITR (Trib) 0483 (Jai)

- ✓ Income Tax Act considers income earned legally as well as tainted income alike

  CIT v K. Thangamani (2009) 309 ITR 0015 (Mad)

- ✓ Even embezzled cash was held to be assessable having regard to the accepted commercial practice and by deducting such expenses and losses as allowable under the Income Tax Act.

  Badridas Daga v CIT [1958] 34 ITR 10 (SC)

- ✓ **Can Explanation 1 to section 37 come into play?**

  Explanation deals with deduction of expenses claimed u/s. 37(1). Cannot deal with receipt of SBNs.

  ITO v Sri Tatiparti Satyanarayana in ITA No. 76/Viz/2021 dated 16.03.2022
  Mrs.Umamaheswari v ITO in ITA No. 527/Chny/2022 dated 14.10.2022

- ✓ *Instruction No.3 of 2017 dated 21.02.2017 - Cash out of earlier income or savings In case of an individual (other than minors) not having any business income, no further verification is required to be made if total cash deposit is up to Rs.2.5 lakh. In case of taxpayers above 70 years of age, the limit is Rs. 5.0 lakh per person. The source of such amount can be either household savings/ savings from past income or amounts claimed to have been received from any of the sources mentioned in Paras 2 to 6 below. Amounts above this cut-off may require verification to ascertain whether the same is explained or not. The basis for verification can be income earned during past years and its source, filing of ROI and income shown therein, cash withdrawals made from accounts etc.*

- ✓ *Instruction binding on revenue. Assessing officer has no mandate to tax cash deposit in bank account during Demonetization if the amount is less than 2.5 lakhs.*

  Smt. Uma Agrawal v ITO [2021] 189 ITD 659 (Agra Trib.)

- **Peculiar Challenges on certain additions made with respect to demonetisation**

  - ✓ Additions made with respect to cash deposits by debtors of the assessee in other city into the bank account of the assessee in SBNs

  - ✓ Huge deposits from out of proceeds of sale in respect of jewelers, from unidentifiable customers

  - ✓ Amount of SBNs deposited from genuine sale recorded in the books of account being added as unexplained u/s.68 / 69A without reducing the amount from income already offered to tax by assessee, results in taxing the same income twice, once at normal rates and again at higher rate

- **Instances of earlier Demonitisations in India – Case Laws**

  - ✓ The Patna High Court in the case of **Lakshmi Rice Mills v CIT [1974] 42 CCH 0104 (Pat HC)** held that *cash balance of the assessee shown in its books being sufficient to cover the value of high denomination notes and accounts having been accepted as genuine, high denomination notes could not be treated as income from undisclosed sources.*

  - ✓ The Bombay High Court in the case of **Narendra G. Goradia (HUF) v CIT [1998] 66 CCH 0659 (Mum HC)** observed that, "*A portion of the amount received by assessee on encashment of high denomination notes could not be added as income from undisclosed sources when there is no dispute about the availability of sufficient cash balance with the assessee nor about the fact that sufficient amount was kept by assessee in high denomination notes."*

  - ✓ The Allahabad High Court in **Gur Prasad Hari Das v CIT [1962] 30 CCH 0029 (All HC)** held that:

    "*The other error which the Tribunal made was in mooting the possibility of a cash balance containing a certain proportion of high denomination notes. There is no basis for this supposed proportion. It is possible that even in a cash balance of a very large amount there may be no high denomination notes at all. Equally it is possible that even in a cash balance of a small amount almost the entire cash balance may be made up only of high denomination notes. When both the possibilities are there, it cannot be said that in taking the existence or non-existence of high denomination notes in a certain cash balance in a certain proportion the Tribunal could hold that the burden which rested upon the IT*

Department stood discharged. It follows that it cannot be said in the circumstances of this case that the Tribunal had before it material for holding that the assessee could not have in possession any of the remaining thirteen high denomination notes also and that these remaining thirteen high denomination notes or any of them represented the income of the assessee from some undisclosed source

Tribunal having accepted that some of the high denomination notes belonged to assessee, it could not have treated the value of balance notes as assessee's undisclosed income on the material on record"

- **Cases after 2016 Demonetization**

  - ✓ *"5. The Ld A.R relied on certain case laws which are relevant to the issue under consideration. In the case of Lakshmi Rice Mills (1974) 97 ITR 258 (Patna), it has been held that, when books of account of the assessee were accepted by the revenue as genuine and cash balance shown therein was sufficient to cover high denomination notes held by the assessee, then the assessee was not required to prove source of receipt of said high denomination notes which were legal tender at that time. In the case of M/s. Hirapanna Jewellers (ITA No. 253/Viz/2020 dated 12.5.2021), it was held that when the cash receipts represented the sales which has been duly offered for taxation, there is no scope for making any addition under section 68 of the Act in respect of deposits made into the bank account.*

    6. I notice that the decision rendered in both the above said cases support the case of the assessee. Accordingly, in the facts and circumstances of the case, I am of the view that the addition of Rs. 45 lakhs made in the hands of the assessee is not justified, since the said deposits have been made from the cash balance available in the books of account. Accordingly, I set aside the order passed by learned CIT(A) on this issue and direct the Assessing Officer to delete the addition of Rs. 45 lakhs."

    R.S. Diamonds India P. Ltd. v ACIT [2022] 98 ITR(T) 505 (Mum. - ITAT)

  - ✓ *"The addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid tender. Since the sale proceeds for which cash was received from the customers was already admitted as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation. It is also on record that the assessee was having only one source of income from trading in beedi, tea power and pan masala and therefore provisions of section 115BBE of the Act will have no application so as to treat the income of the assessee as income from other sources. Hon'ble Kolkata Tribunal in the case of CIT Vs.*

Associated Transport Pvt. Ltd. reported in 84 Taxman 146 on identical facts took the view that when cash sales are admitted and income from sales are declared as income, wherein the Hon'ble Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, that there was no reason to treat the cash deposits as income from undisclosed sources. The Hon'ble Vishakapatnam Tribunal in the case of ACIT Vs. Hirapanna Jewelers in ITA No. 253/Viz/2020 on identical facts held that when cash receipts represent the sales which the assessee has offered for taxation and when trading account shows sufficient stock to effect the sales and when no defects are pointed out in the books of account, it was held that when Assessee already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. I am of the view that in the light of the facts and circumstances of the present case, the addition made is not sustainable and the same is directed to be deleted."

Anantpur Kalpana v ITO (2022) 194 ITD 702 (Bang. ITAT)

- ✓ Rs.4.50 Lakhs received as cash gift from brothers at the occasion of marriage of daughter accepted as valid.

Smt.Porkodi v ITO – ITA No. 378/Chny/2022 dated 14.10.2022

- ✓ In case of Non rejection of book result, cash availability cannot be doubted

Smt.Charu Aggarwal v DCIT [2022] 96 ITR(T) 66 (Chd. ITAT)

SECTION 69 – UNEXPLAINED INVESTMENTS

Conditions for invoking the provisions

- Any investment may be deemed to be the income of the assessee under this section if

  (1) An assessee has made investments in the financial year preceding the assessment year

  (2) Such investment is not recorded in the books of account, if any, maintained for any source of income

  (3) Assessee offers no explanation for the source of the investment or the Assessing Officer is not satisfied with the explanation offered by the assessee

- Unlike section 68, maintaining of books of account is not compulsory to make an addition u/s.69

- Section 69 provides that the Assessing Officer may treat the value of the investments as the income of the assessee in case the explanation offered by the assessee is not found satisfactory to him.

- The word used in this section is “may” and not “shall” which means that it is not obligatory on the part of the Assessing Officer to treat such investment as income in every case even if he is not satisfied with the explanation of the assessee

  CIT v Smt.P.K.Noorjahan [1999] 237 ITR 570 (SC)
  CIT v Moghul Durbar [1995] 216 ITR 301 (AP)

- If the investment stands in the name of a third person, the assessee cannot be called upon to explain the source for such deposit even if the third person is related to the assessee. The person in whose books the investment appears or the person in whose name the investment is made has to explain the source of the investment.

  CIT v Roshan Lal Seth [1989] 178 ITR 660 (P&H-HC)

- Prerequisite conditions of section 69 i.e. the Assessing Officer has to establish that there were investments made by the assessee; that such investments were not recorded in the books of account maintained by the assessee; and that such investments had been made in the financial year immediately preceding the assessment year in question, have to be satisfied even if presumption u/s. 132(4A) is raised against the assessee

  Ushakant N. Patel v CIT [2006] 282 ITR 553 (Guj)

- Assessing Officer cannot make addition for the source of any investment made by the assessee’s relatives merely because the explanation given by the asseesee is not acceptable. The Assessing Officer has to bring in material evidence to make a conclusion that the investments were infact made by the assessee.

  CIT v Daya Chand Jain Vaidya [1975] 98 ITR 280 (All.)

ISSUES

- Whether shortage of cash found during search can be considered as undisclosed investment?

  None of the sections provide for addition in situation where cash found is less than the amount reflected in books. Department’s contention – Undisclosed investment. No corresponding investment is found.

Significance of incriminating material found in search – ***PCIT v Abhisar Buildwell P. Ltd. [2023] 149 taxmann.com 399 (SC); CIT v Continental Warehousing Corporation [2015] 374 ITR 645 (Bom)***

- Addition u/s.69 on account of unexplained jewellery cannot be made if assessee had been assessed for more jewellery than those found in the course of search for earlier year under Wealth-tax Act, merely because the assessee could not furnish the evidence of remaking.

DCIT v Arjun Dass Kalwani [2006] 101 ITD 337 (Jodh)

- Assessee admitted undisclosed investment during the course of survey based on loose papers, but later retracted. Addition can be made u/s.69 under such circumstances only if Assessing Officer makes further enquiries regarding information from the loose papers and obtains corroborative evidence.

The Amendment to section 292C by the Finance Act, 2008 extending the presumption of correctness to materials found during survey should not make any difference to the conclusion based on further materials.

ACIT v Ravi Agricultural Industries [2009] 316 ITR (AT) 1 (Agra)

- Where assessee admitted undisclosed profit during survey and retracted the same at the time of assessment on the ground that admission was due to mental pressure and coercion, then addition cannot be made u/s.69

CIT v S.Khader Khan Son [2013] 352 ITR 480 (SC)
CIT v S.Khader Khan Son [2008] 300 ITR 157 (Mad)
Paul Mathew & Sons v CIT [2003] 263 ITR 101 (Ker)
CBDT Instruction in F. No. 286 / 2 / 2003 - IT(Inv) dated 10.03.2003
CBDT Instruction in F.No.286 / 98 / 2013 – IT (Inv.II) dated 18.12.2014

- The statement of the assessee cannot be made the sole basis for addition without any material evidence and there is no provision in the statute to prevent the declarant from retracting his statement. The A.O. cannot make an addition without bringing any adequate material on record to prove the real income to be as admitted by the assessee in the course of survey. The A.O. must examine the correctness of the statement before making the addition

ACIT v A.T. Associates 99 TTJ (Nag) 74.

- Where secret business dealings of the assessee involve unexplained investments, the amount invested is assessable u/s. 69

Himmatram Laxminarain v CIT 161 ITR 7 (P & H)

- If Assessing Officer has accepted the sales, even though the assessee has not proved the genuineness of the purchases and sales, the entire purchases cannot be disallowed. Only the profit element embedded in purchases would be subjected to tax.

  Bholanath Polyfab 355 ITR 290 (Guj)
  Kaveri Rice Mills 157 Taxman 376 (All)
  La Medica 250 ITR 575 (Del)

- The entire sale proceeds cannot be regarded as profit or treated as undisclosed income of the assessee. It is the net profit rate which is to be adopted as the undisclosed income of the assessee

  Manmohan Sadani v CIT [2008] 304 ITR 52 (MP)

- The Assessing Officer may sometimes presume that there was corresponding purchase for undisclosed sales and he may treat the amount used for such purchase as unexplained investment.

- Where value of stock declared by the assessee to the bank is different from the stock recorded in the books of account, addition cannot be made u/s.69 on account of the discrepancy between the stock shown in the books of account and the stock shown in the statement to the bank.

- The mere fact that the assessee had made such a statement by itself cannot be treated as having resulted in an irrebuttable presumption against the assessee. The burden of showing that the assessee has undisclosed income is on the revenue. That burden cannot be said to be discharged by merely referring to the statement given by the assessee to a third party in connection with a transaction which was not directly related to the assessment and making that the sole foundation for a finding that the assessee has deliberately suppressed his income.

  CIT v N. Swamy [2000] 241 ITR 363 (Mad)
  CIT v Relaxo Footwear [2002] 123 Taxman 322 (Raj)
  Ashok Kumar v ITO 201 CTR (J&K) 178 : 149 Taxman 479 (J&K)
  CIT v Khan & Sirohi Steel Rolling Mills 200 CTR (All) 595,
  CIT v Apcom Computers (P) Ltd. [2007] 158 Taxman 363 (Mad)
  CIT v Veerdip Rollers P. Ltd. [2010] 323 ITR 341 (Guj) **SLP filed by Department has been rejected by Supreme Court [2008] 307 ITR (St.) 3.**

- However contrary view has been taken where it has been held that difference between stock statement submitted to bank and stock as per books may be added as unexplained investment

  Swadeshi Cotton Mills Co. Pvt. Ltd. v CIT 125 ITR 33 (All)
  Dhansiram Agarwal v CIT 201 ITR 192 (Gau)
  CIT v. Pioneer Breeding Farms 295 ITR 78 (Mad)

CIT v. Ashok Estate Private Ltd. 141 ITR 785 (Ker)
Max Text Chemm Products v CIT 83 ITD 96 (Pune)

- Where assessee has purchased shares at a cost lower than the market price, the difference between the market price and purchase price shown by the assessee cannot be added as income u/s.69

Rupee Finance & Management P. Ltd. v ACIT [2009] 310 ITR (AT) 403 (Mum)

- However w.e.f. 01.10.2009 as per section 56(2)(vii), now section 56(2)(x), the difference between the fair market price and the purchase price will be taxed under the head 'other sources' if the assessee is an individual or HUF and the difference between fair market price and purchase price exceeds Rs.50,000.

- Where capital contributed by partner in firm, the onus is on the partners to explain the source, and if they fail to do so, the amount could be added as income from undisclosed sources in the hands of the partner only and not in the hands of the firm.

India Rice Mills v CIT [1996] 218 ITR 508 (All)

- Where the assessee has not maintained books of account and additions are made towards unexplained investments, the additions made would be sustainable under section 69 and not under section 69B.

Dr. Prakash Tiwari v. CIT [1984] 148 ITR 474 (MP)

SECTION 69A – UNEXPLAINED MONEY

Conditions for invoking the provisions

- The value of any money, bullion, jewellery or other valuable article may be deemed to be the income of the assessee if

  (1) The assessee is found to be the owner of the same in the relevant financial year

  (2) It is not recorded in the books of account if any maintained by the assessee

  (3) Assessee offers no explanation about the nature and source of acquisition of the same or the Assessing Officer is not satisfied with the explanation offered by the assessee

- Addition u/s.69A cannot be made in respect of those assets / monies / entries which are recorded in the assessee's books of account

  CIT v Anoop Jain [2020] 424 ITR 115 (Del)
  Teena Bethala v ITO in ITA No.1383 / Bang / 2019
  DCIT v Karthik Construction Co. in ITA No. 2292/Mum/2016

- Additions cannot be made merely on assumptions or presumptions or by subterfuge or contrivance. It is the burden of the Department to prove the correctness of additions.

  K.P. Varghese vs. ITO & Anr. [1981] 131 ITR 597 (SC)
  CIT v A. Raman & Co. [1968] 67 ITR 11 (SC)
  Umacharan Shaw & Bros. vs. CIT (1959) 37 ITR 271 (SC)

- Sales made to a customer was held as bogus by AO – Customer was not in existence – Assessee could not prove sales – Addition made u/s. 69A – HC held that once amount is added u/s. 69A –corresponding sales should be reduced by AO

  J. M. Wire Industries v. CIT [2012] 18 taxmann.com 297 (Del)

- Procedure available in regular assessment by application of the principles relating to burden of proof in sections 68, 69, 69A, 69B and 69C, also apply in search cases

  Triumph Securities Ltd. v DCIT [2011] 10 ITR (Trib) 1 (Mum.)(SB)

SECTION 69B – AMOUNT OF INVESTMENTS ETC NOT FULLY DISCLOSED IN BOOKS OF ACCOUNT

Conditions for invoking the provisions

(1) An assessee has made investments in the financial year preceding the assessment year or the assessee is found to be the owner of any money, bullion, jewellery or other valuable article in the relevant financial year

(2) The amount expended on making such investments or acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in the books of account, maintained by the assessee for any source of income

(3) Assessee offers no explanation for the excess amount or the Assessing Officer is not satisfied with the explanation offered by the assessee

Then the excess amount may be deemed to be income of the assessee for such financial year.

- Additions towards cost of construction of property cannot be made based on the report of the valuation officer if

  (1) the credibility of the books of account maintained by the assessee is not doubted
  (2) the books of account maintained by the assessee is not rejected by the Assessing Officer

  Smt. Amiya Bala Paul v CIT [2003] 262 ITR 407 (SC)
  ACIT v C. Subba Reddy 2005 Tax LR 373 (Mad)

- Addition towards source of investment over and above what was disclosed by the assessee, cannot be made based on noting found during the course of search as they are only indicative but not a conclusive evidence of the purchase price of the property or on the basis of mere conjectures and surmises. The Assessing Officer has to necessarily conduct suitable enquiries and should make an addition on the basis of findings of such enquiries or on the basis of any records or books of account. The burden of proving the actual consideration in such a situation is that of the revenue.

  CIT v P.V. kalyanasundaram [2006] 282 ITR 259 (Mad)
  CIT v Lalit Bahsin 290 ITR 245 (Del)
  Omega Estates v ITO 106 ITD 427 (Chennai)

- Addition cannot be made based on unsigned copy of agreement indicating large consideration found and seized by the department merely because it is found in the premises of the assessee. The seller of the property also has to be examined.

  Manohar Lal Rattan Lal v DCIT [2004] 91 TTJ (Asr) 737
  Rejender Kumar Garg v DCIT [2000] 67 TTJ (Del) 347,
  Smt. Saroj Kumari L/H of *Late Smt. Dampati Devi (Decd) v ACIT [2004] 91 TTJ (Asr) 733*

- If the seller admits that the price paid was more than what was declared in the sale deed, then assessment of difference in the hands of the purchaser is justified.

  CIT v. T.O. Abraham [2012] 347 ITR 378 (Ker)

SECTION 69C – UNEXPLAINED EXPENDITURE ETC

Conditions for invoking the provisions

- Any expenditure or part thereof may be deemed to be the income of the assessee in any financial year, if

  (1) The assessee has incurred any expenditure

  (2) Assessee offers no explanation for the source of such expenditure or the Assessing Officer is not satisfied with the explanation offered by the assessee

- Such unexplained expenditure which is deemed as the income of the assessee shall not be allowed as deduction under any head of income.

- Assessing Officer has to prove with evidence on record that certain expenditure has been incurred by the assessee and not by any other person and the quantum thereof

- Assessing Officer cannot estimate the expense without any evidence on record

- The Assessing Officer must find out the financial year with dates, in which such expenditure is incurred by the assessee

- Explanation offered by assessee about the source of expenditure cannot be simply rejected by the Assessing Officer without any evidence on record

- Additions cannot be made based on entries found in the pocket diary in an action u/s.132 and where proper explanation has been given by the assessee

  ACIT v Vikram Vijay Mehta in ITA Nos.4391 & 4392 / Mum / 2013 – Mumbai ITAT

SECTION 115BBE – TAX ON INCOME REFERRED TO IN SECTIONS 68, 69, 69A, 69B, 69C

Conditions for invoking the provisions

- Total income of the assessee

  (1) Includes any income referred to in sections 68, 69, 69A, 69B, 69C or 69D and that the said income is reflected in the return of income filed u/s.139, or

(2) Determined by the Assessing Officer includes any income referred to in sections 68, 69, 69A, 69B, 69C or 69D and if the same is not declared in the return of income filed u/s.139

- Income Tax payable under this section – 60% of the above income
  Effective rate – 78% (surcharge of 25% and cess 4%)

- Where the income is computed under the provisions of sections 68, 69, 69A, 69B, 69C or 69D then the assessee would not be allowed to claim deduction of any expenditure or allowance or set off of any losses under the provisions of the Income Tax Act

- Once a particular income is explained and proved to be falling under any of the five heads, the same cannot be considered as unexplained u/s.69, 69A, 69B, 69C or 69D and thus eligible for deductions of expenses / set off of loss

  Fakir Mohaamed Haji Hasan v CIT [2001] 247 ITR 290 (Guj)

- Set off of losses against income referred to in section 115BBE is allowable till Assessment Year 2016-17

  Vijaya Hospitality and Resorts Ltd v CIT [2020] 419 ITR 322 (Ker)
  CBDT Circular No.11 / 2019 dated 19.06.2019

- **Section 115BBE covers income reflected in return filed u/s.139. Whether returns filed in response to notice u/s.142(1), 148, 153A and 153C would also be covered**

- Section 148, 153A states that where a return is furnished in response to notice u/s.148, 153A respectively, the provisions of the Income Tax Act would apply accordingly as if such return were a return furnished u/s.139. The same would apply to section 153C as well since the return would be filed in response to notice u/s.153A r.w.s. 153C

- However such language is not used in section 142(1).

Applicability of section 115BBE - Whether retrospective

- Section 115BBE was introduced by the Taxation Laws (Second Amendment) Act, 2016 on 15th December 2016 with effect from 1st April 2016.

- A new tax which fastens new liability on the assessee cannot be applied retrospectively.

- Hon'ble Supreme Court in ***CIT (Central)-I v Vatika Township Private Limited [2014] 367 ITR 466 (SC)*** has analyzed and held that in case of declaratory statutes i.e., where a particular amendment can be treated as clarificatory or declaratory in nature, in such cases the applicability can be retrospective

- Analyzing the amendment in section 115BBE levying tax @ 60% on the pedestal of the decision in ***Vatika Township Private Limited*** makes it clear that the said amendment in section 115BBE is not declaratory and hence is not retrospective.

- The intent of legislature is clear from the Taxation Laws (Second Amendment) Bill, 2016 which proposed substitution of section 115BBE originally providing for tax at the rate of 30% of income referred to in sections 68 to section 69D and which received the assent of the President on 15th December 2019.

- The amendment relating to 115BBE reads as follows:

  2. In the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act), in section 115BBE, for sub-section (1), the following sub-section shall be substituted with effect from the 1st day of April, 2017, namely:…….

- The language used in the amendment does not specifically state that the amendment is retrospective nor uses the words *"it shall be deemed always to have meant"* which would make it a declaratory statue and thus retrospective in nature.

- Where the statue does not specifically mention an amendment to be retrospective then as held by the Hon'ble Supreme Court it would not be so construed when the pre-amended provision was clear and unambiguous.

- This amendment cannot also be called as clarificatory in nature since the section before amendment did not have any mischief or any obvious omission with reference to the rate of tax which was previously @ 30% on income referred to in section 69 to 69D. Hence the amendment in section 115BBE increasing the rate of tax to 60% is not retrospectively applicable.

- That the section is not declaratory in nature is made more clear on comparison of the above amendment made through the Taxation Laws (Second Amendment) Bill, 2016 with another amendment made through the Finance Act, 2018 in section 115BBE.

- In sub-section 2 to section 115BBE the words "and clause (b) of sub-section (1)" were added through Finance Act, 2018 which was added to amend an obvious omission in sub-section 2. This amendment in Finance Bill, 2018 which received the asset of President reads as follows:

  "36. In section 115BBE of the Income-tax Act, in sub-section (2), after the word, brackets and letter "clause (a)", the words, brackets and letter "and clause (b)" ***shall be inserted and shall be deemed to have been inserted*** *with effect from the 1st day of April, 2017."*

- On comparison of the above two amendments in Section 115BBE it becomes clear that the amendment in section 115BBE increasing the rate of tax to 60% is not retrospectively applicable.

- Amendment on the first day of a financial year applies to the assessments of that year and any amendment that comes into force subsequently do not apply to the said assessment

  Karimatharivi Tea Estate Ltd v State of Kerala [1966] 60 ITR 262 (SC)

- The amendment in section 115BBE has been challenge before the Rajasthan High Court in Deepak Maratha v UOI, through the Ministry of Finance and Ors in CWP No.3625 / 2020 where the Rajasthan High Court has issued notice to the finance ministry on 06.03.2020 and made interim order not to take coercive steps for recovery proceedings.

SECTION 271AAC – PENALTY

- Penalty is leviable under this section where the income is determined under sections 68, 69, 69A, 69B, 69C or 69D.

- Section 271AAB would apply in cases of search.

- Penalty – 10% of the tax payable u/s.115BBE(1)(i).

- No penalty is leviable if income referred to in sections 68 to 69D is included in the return of income filed u/s.139(1) and tax is paid u/s.115BBE(1)(i) on or before the end of the relevant previous year.

- No Penalty under this section if penalty is already levied u/s.271AAB.

- No penalty u/s.270A is leviable where penalty is levied under this section in respect of income referred to in sections 68 to 69D.

- Section states Assessing Officer “may” levy penalty under this section. Hence, there is discretion with the Assessing Officer.

  Discretion to be exercised judicially – ***Hindustan Steel Ltd. v State of Orissa [1972] 83 ITR 26 (SC)***

- Section 273B does not cover penalty u/s.271AAC which means assessee cannot show reasonable cause for non-levy of penalty under this section.

- Provisions of section 274 and 275 shall apply.

REASSESSMENT u/s 148 & 148A

- Provisions and case laws

Adv. Sashank Dundu

Scheme of Re-assessment prior to 01.04.2021

Scheme of Re-assessment prior to 01.04.2021

Income escaping assessment.

147. If the Assessing Officer has **reason to believe** that **any income chargeable to tax has escaped assessment** for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).

For the purpose of making reassessment u/s 147 of the Act a notice u/s 148 of the Act should be issued **after recording proper reasons** with regard to escapement of income chargeable to tax.

Scheme of Re-assessment prior to 01.04.2021

Procedure under the erstwhile Re-assessment scheme:

- **Recording** of **reasons to believe**
- When re-assessment was initiated **beyond four assessment years**.
- **Valid sanction** under section 151
- **Time limit** for issuance of notice

Concept of “Reasons to Believe”

- Concept of ‘**reason to believe**’ was explained to mean honest/ bonafide belief of a prudent person which has live link/ connection with the tangible information on the basis of which such belief is formed;

[Ref: S. Narayanappa vs. CIT 63 ITR 219 (SC), Ganga Saran & Sons (P.) Ltd. vs. ITO 130 ITR 1 (SC), Raymond Woollen Mills Ltd. vs. ITO 236 ITR 34 (SC), Sheo Nath Singh vs. AAC 82 ITR 147 (SC), ITO vs. Lakhmani Mewal Das 103 ITR 437 (SC)]

RELEVANCE OF MATERIAL/INFORMATION IN FORMING A REASONABLE BELIEF

- In ***ITO v. Lakhmani Mewal Das [1976] 103 ITR 437(SC)***, the Hon'ble Supreme Court while interpreting the provisions of section 147 of the Act held that there must be a direct and rational nexus or a live link between material available with AO and the formation of belief.

Few points on “reasons to believe”

- Reasons must be **dated**. Date specified in reasons to believe must be before the date of issue of notice under section 148 of the Income Tax Act.
- **Approval** of appropriate authorities must be obtained on reasons to believe.
- Reasons must be **recorded** in writing.
- It must be written that “**I have reasons to believe**” It cannot be replaced by any other phrase.
- Reasons must be of a **jurisdictional** Assessing officer.
- It must be based on **evidence**.

Scheme of Re-assessment prior to 01.04.2021

Step by Step Procedure

Issuance of notice under section 148: After complying with the statutory requirements, AO was required to issue jurisdictional notice under section 148 intimating the assessee about initiation of re-assessment proceedings and directing filing of return of income;

Filing of Return of Income and seeking reasons: Upon receipt of notice under Sec. 148, assessee was required to file its return of income for the said year and seek reasons to believe;

Scheme of Re-assessment prior to 01.04.2021

Procedure under the erstwhile Re-assessment scheme:

- **Furnishing reasons recorded along with other documents**: AO was obliged to provide copy of reasons recorded under section 148(2), along with copies of the sanction under section 151 and documents/ information/ evidence relied upon;

- **Filing of preliminary legal objections:** After receiving reasons as well as other documents, assessee was at liberty to challenge the initiation of such re-assessment proceedings by filing legal objections with the AO;

Scheme of Re-assessment prior to 01.04.2021

Procedure under the erstwhile Re-assessment scheme:

- **Order disposing-off legal objections**: If legal objections were filed by the assessee, AO, prior to proceeding with the re-assessment, was required to pass a separate speaking order disposing-off the legal objections following the guidelines laid down by Apex Court in the case of GKN Driveshafts (India) Ltd even though there is no provision in the Act. If adverse action was taken by AO, assessee was at liberty to challenge the same invoking writ jurisdiction of the Hon'ble Jurisdictional High Court;

Scheme of Re-assessment prior to 01.04.2021

Procedure under the erstwhile Re-assessment scheme:

- **Completion of re-assessment proceedings and passing the assessment order:** After disposing off the legal objections, the AO was required to conduct necessary enquiries and finalize the assessment after taking into account the responses of assessee. Assessment order was required to be passed within the time period provided under section 153 of the Act.

- The aforesaid procedure has been approved by the Supreme Court in the landmark case of **GKN Driveshafts (India) Ltd. vs. ITO 259 ITR 19 (SC)**.

Scheme of Re-assessment prior to 01.04.2021

Other Important principles laid down by Courts w.r.t. erstwhile Re-assessment scheme:

- Re-assessment proceedings could not be a means to carry out **fishing and roving enquiries**, necessary enquiry / investigation should precede initiation of re-assessment proceedings; [Ref: Chhugamal Rajpal vs. S.P. Chaliha 79 ITR 603 (SC); CIT vs. Batra Bhatta Co. 321 ITR 526 (Del)].

- **Review of an assessment** in the guise of re-assessment proceedings was barred, being an in-built and inherent check on the arbitrary exercise of power of reassessment by AO. Concept of '**change of opinion**' was to be read into the re-assessment scheme. [Ref: CIT vs. Kelvinator of India Ltd. 320 ITR 561 (SC)]

Scheme of Re-assessment prior to 01.04.2021

Other Important principles laid down by Courts w.r.t. erstwhile Re-assessment scheme:

- **Valid sanction under section 151** an inbuilt check on the wanton exercise of power under section 147, cannot be reduced to mere formality. Sanction must be proper. [Ref: United Electrical Co. Pvt. Ltd 258 ITR 317 (Del); Arjun Singh vs. ADIT 246 ITR 363 (MP); S.P. Agarwalla alias Sukhdeo Prasad Agarwalla vs. ITO 140 ITR 1010 (Cal)]

- Furnishing of reasons to believe, sanction u/s 151, and relied upon documents/information/evidence, to assessee is mandatory; [Ref: GKN Driveshaft (Supra), Sabh Infrastructure vs. ACIT 398 ITR 198 (Del), Tata Capital Financial Services Ltd. vs. ACIT [W.P. No.546/2022; decided on 15.02.2022] (Bom)]

Scheme of Re-assessment w.e.f 01.04.2021

Scheme of Re-assessment w.e.f 01.04.2021

MEMORANDUM EXPLAINING FINANCE BILL

Assessment or reassessment or re-computation of income escaping assessment, to a large extent, is information-driven. In view of above, there is a need to completely reform the system of assessment or reassessment or re-computation of income escaping assessment and the assessment of search related cases.

The Bill proposes a completely new procedure of assessment of such cases. It is expected that the new system would result in less litigation and would provide ease of doing business to taxpayers as there is a reduction in time limit by which a notice for assessment or reassessment or re-computation can be issued.

Scheme of Re-assessment w.e.f 01.04.2021

Introduction of new scheme of Re-assessment vide Finance Act 2021; further amended vide Finance Act 2022:

- The legislature vide the Finance Act, 2021 completely revamped the scheme of reassessment by substituting the provisions of sections 147, 148, 149 & 151 and inserted section 148A for introducing new procedure to be followed before issuance of notice under section 148.

- Sunset clauses were inserted in sections 153A & 153C in respect of assessments to be completed pursuant to search initiated under section 132 & requisition under section 132A on or after 01.04.2021.

- New re-assessment scheme came into effect from 01.04.2021.

- New Re-assessment scheme was framed by adopting the principles laid down by the Courts from time to time with regard to reopening of the Assessments.

Scheme of Re-assessment w.e.f 01.04.2021

- **Income escaping assessment.**
- **147. If any income chargeable to tax**, in the case of an assessee, **has escaped assessment** for any assessment year, **the Assessing Officer may**, subject to the provisions of sections 148 to 153, **assess or reassess such income** or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).
- *Explanation.*—For the purposes of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, **and such issue comes to his notice subsequently in the course of the proceedings under this section**, **irrespective of the fact that the provisions of section 148A have not been complied with**.]

Scheme of Re-assessment w.e.f 01.04.2021

- **Issue of notice where income has escaped assessment.**[25a]
- **148.** Before making the assessment, reassessment or recomputation under section 147, and **subject to the provisions of section 148A**, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (*d*) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:
- **Provided** that **no notice under this section shall be issued unless there is information** with the Assessing Officer which suggests **that the income chargeable to tax has escaped assessment** in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice:
- [25b]**[Provided further** *that no such approval shall be required where the Assessing Officer, with the prior approval of the specified authority, has passed an order under clause (*d*) of section 148A to the effect that it is a fit case to issue a notice under this section.*]**

Scheme of Re-assessment w.e.f 01.04.2021

- Explanation 1.—For the purposes of this section and section 148A, the **information** with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—
- (i) any information in the case of the assessee for the relevant assessment year in accordance with the **risk management strategy formulated** by the Board from time to time;
- [(ii) any **audit objection** to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or
- (iii) any information received **under an agreement** referred to in section 90 or section 90A of the Act; or
- (iv) any information made available to the Assessing Officer under the scheme notified under **section 135A**; or
- (v) any information which requires action in consequence of the **order of a Tribunal or a Court**.]

- Explanation 2.—For the purposes of this section, where,—
- (i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or
- (ii) a survey is conducted under section 133A, other than under sub-section (2A) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or
- (iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132Ain case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or
- (iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee.
- the Assessing Officer shall be **deemed to have information** which suggests that the income chargeable to tax has escaped assessment in the case of the assessee [where] the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person
- Explanation 3.—For the purposes of this section, specified authority means the specified authority referred to in section 151.]

Scheme of Re-assessment w.e.f 01.04.2021

Important/Key aspects of the new Re-assessment scheme – STEP BY STEP PROCEDURE:

- Prior to issuance of notice under section 148, AO is required to follow the procedure prescribed under section 148A and pass an order under section 148A(d). Procedure under section 148A is not required to be followed in search/ survey/ requisition cases.

- The AO, under section 148A, is obliged to:

  STEP 1:

Conduct requisite enquiry, with the prior approval of the specified authority, with respect to **information** which suggests that income of the assessee has escaped assessment [section 148A(a)] since in some cases ;

Scheme of Re-assessment w.e.f 01.04.2021

Important/Key aspects of the new Re-assessment scheme – STEP BY STEP PROCEDURE:

Further, the use of the word, ‘information’ cannot be lightly resorted to.

Information suggesting income escaping assessment

EXCEL COMMODITY & DERIVATIVE (P) LTD. vs. UOI Calcutta HC APOT/132/2022 IA No.GA/1/2022 dt. 29.09.2022

• As pointed out in the aforesaid mentioned decision, the term "information" in Expln. 1 under s. 148 cannot be lightly resorted to so as to reopen assessment and this information cannot be a ground to give unbridled power to the Revenue. In fact, in the case on hand, the information has been lightly used which resulted in issuance of notice. As pointed out earlier, the assessee had submitted the explanation to the notice along with documents in support of their claim.

Scheme of Re-assessment w.e.f 01.04.2021

Important/Key aspects of the new Re-assessment scheme – STEP BY STEP PROCEDURE:

Further, the Court also observed that the assessee had submitted the explanation to the notice along with documents in support of their claim. The assessing officer has given up the said allegation which formed the basis of the notice and proceeded on a fresh ground for alleging that the transaction with some other company was an accommodation entry. Therefore, on that score also the order dated 7th April, 2022 is liable to be set aside in its entirety without giving any opportunity to reopen the matter on a different issue.

Scheme of Re-assessment w.e.f 01.04.2021

Important/Key aspects of the new Re-assessment scheme – STEP BY STEP PROCEDURE:

Dr. Mathew Cherian v. ACIT WP.No.12692 of 2022 (2023) 450 ITR 568 (Mad.)(HC)

• Caveat/pre-condition is that such information must enable the suggestion of escapement of tax. Then again, the mandate cast upon the officer under s. 148A(d) is that he is to decide whether it is a 'fit case' for issue of a notice for reassessment, upon a study of the material in his possession, including the response of the assessee.

• Thus, not all information in possession of the officer can be construed as 'information' that qualifies for initiation of proceedings for reassessment, and it is only such 'information' that suggests escapement and which, based upon the material in his possession, that the officer decides as 'fit' to trigger reassessment, that would qualify.

Scheme of Re-assessment w.e.f 01.04.2021

Important/Key aspects of the new Re-assessment scheme – STEP BY STEP PROCEDURE:

• The ‘information’ in possession of the Department must prima facie, satisfy the requirement of enabling a suggestion of escapement from tax. This is not to say that the sufficiency or adequacy of the ‘information’ must be tested, as such an analysis would be beyond the scope of jurisdiction of this Court in writ jurisdiction. However whether at all the ‘information’ gathered could lead to a suggestion of escapement from tax can certainly be ascertained.

• With the necessity for ‘belief’ effaced from the statutory provision, the dimension of subjectivity that existed pre 1st April, 2021 stands substantially whittled. In the present regime of reassessments, an AO must be able to establish proper nexus of information in his possession, with probable escapement from tax. No doubt the term used is ‘suggests’. That is not to say that any information, however tenuous, would suffice in this regard and it is necessary that the information has a live and robust link with the alleged escapement. This is where settled propositions assume relevance and importance.

Scheme of Re-assessment w.e.f 01.04.2021

Important/Key aspects of the new Re-assessment scheme – STEP BY STEP PROCEDURE:

STEP 2:

Issue a notice upon the assessee to show-cause why notice under section 148 should not be issued and provide an opportunity of being heard to the assessee [section 148A(b)]. Time period of at least 7 days but not exceeding 30 days to be provided to respond to show cause notice. However, Assessing Officer has power to extend the time limit if an application is made in this behalf by the Assessee.

Scheme of Re-assessment w.e.f 01.04.2021

Important/Key aspects of the new Re-assessment scheme – STEP BY STEP PROCEDURE:

Whether notice u/s 148A(a) should precede notice u/s 148A(b)?

As per section 148A(a) of the Income tax Act, an enquiry to be conducted, if required, based on information which suggests that income chargeable to tax has escaped assessment. Thereafter, notice u/s 148A(b) must be issued providing an opportunity to the assessee as to why notice u/s 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment.

It is important to understand that the information available with the AO must show that there is income escaping assessment. Once the AO comes to the conclusion that there is escapement, the same must be communicated to the assessee, based on which the assessee can defend its case.

Swal Ltd. v. Union of India [2022] 141 taxmann.com 523 (Calcutta)[25-08-2022]

Scheme of Re-assessment w.e.f 01.04.2021

Important/Key aspects of the new Re-assessment scheme:

Consider the reply of the assessee [section 148A(c)]; Consideration of reply should not be an empty formality.

Scheme of Re-assessment w.e.f 01.04.2021

Important/Key aspects of the new Re-assessment scheme:

Whether an order u/s 148A(d) can be directly passed after a reply of the assessee is submitted in response to notice issued u/s 148A(d)?

Nidhi Bindal v. ITO [2022] 144 taxmann.com 122 (Delhi)

Where impugned order under section 148A(d) had been passed after receipt of detailed reply by assessee, however, Assessing Officer had not considered reply of assessee, mandate of section 148A(c) had been violated, and therefore, impugned order issued under section 148A(d) and notice issued under section 148 were to be set aside

Scheme of Re-assessment w.e.f 01.04.2021

Important/Key aspects of the new Re-assessment scheme:

Section 148A(d)

"Decide" on the basis of **material available on record** and the reply furnished by the assessee, **by passing "an order" within one month of receipt of assessee's reply** whether or not it is a fit case for issuance of notice under section 148, with prior approval of specified authority [section 148A(d)]. Mere rejection of the Assessee's objections holding that the same are not acceptable will not be treated as proper compliance with the provisions of Sec. 148A(d) of the Act. (Interim order of Telangana High Court in the case of Ved Prakash Agarwal Vs. ACIT [WP. No. 22212 of 2022])

- Procedure provided in section 148A is not applicable in cases of search, survey or requisition initiated or made on or after 01.04.2021 **and in the case of information obtained u/s 135A of the Act (Inserted vide Finance Act 2022)**.

Scheme of Re-assessment w.e.f 01.04.2021

Important/Key aspects of the new Re-assessment scheme:

- Order to be passed on "material on record" and not on suspicion
- **(2022) 447 ITR 698 (Raj) Abdul Majeed vs. ITO**
- • The expression 'material available on record', has been consciously used by the legislature to put a fetter on the exercise of power in the manner that an order under s. 148A of the Act deciding to issue notice under s. 148 of the Act can be based only on the basis of material available on record.
- • Only on the basis that the cash deposits of Rs. 19,39,000 chargeable to tax have escaped assessment, without anything more, the authority was not justified in jumping to the conclusion that the assessee may have more bank accounts. If such an interpretation is placed on the provision of s. 148A(d) of the Act with reference to expression 'material available on record', then in that case, it will open flood gate and even without availability of any material, the authority would be initiating proceedings under s. 148 of the Act, which will completely frustrate the object of incorporation of s. 148A in the Act. It is well settled principle of interpretation that the taxing statute is required to be construed strictly.

Scheme of Re-assessment w.e.f 01.04.2021

Important/Key aspects of the new Re-assessment scheme:

- **Issuance of notice under section 148:** Once the mandatory procedure set in section 148A is undertaken, the AO shall issue notice under section 148, along with the order passed under section 148A(d), if applicable, requiring the assessee to furnish, within the prescribed period, its return of income for the relevant year; (Note: Issuing of automatic approvals eventhough neither AO nor the superior authority conducted enquiries which was noticed by Courts with reference to one hour approvals etc. may also lead to spate of litigation. [CIT Vs. S. Goyanka Lime and Chemical (Madhya Pradesh High Court)]),

- **Completion of re-assessment:** After filing of the return, the assessment proceedings thereafter, shall be carried out in terms of sections 143(3)/ 144 of the Act, as the case may be and the order completing the re-assessment shall be passed within the time limit prescribed under section 153.

- Explanation 2 to section 148 provides that in case of search, **survey** or requisition initiated or made on or after 01.04.2021, **assessing officer shall be deemed to have information which suggest that income chargeable to tax has escaped assessment.**

Scheme of Re-assessment w.e.f 01.04.2021

Important/Key aspects of the new Re-assessment scheme:

- A very important question, which arises is how should the notice be served?
- Sections 282 and Rule 127 deal with service of notice under the Income Tax Act.
- Apart from that, the unanswered questions in the sections have been answered by the High Courts.
- Notice is unsigned/ Date of dispatch in case of digital signature

• [2022] 449 ITR 517 (Delhi) Suman Jeet Agarwal vs. ITO

Scheme of Re-assessment w.e.f 01.04.2021

Important/Key aspects of the new Re-assessment scheme:

- **Completion of re-assessment:** After filing of the return, the assessment proceedings thereafter, shall be carried out in terms of sections 143(3)/ 144 of the Act, as the case may be and the order completing the re-assessment shall be passed within the time limit prescribed under section 153.

- Explanation 2 to section 148 provides that in case of search, **survey** or requisition initiated or made on or after 01.04.2021, **assessing officer shall be deemed to have information which suggest that income chargeable to tax has escaped assessment.**

Scheme of Re-assessment w.e.f 01.04.2021

Important/Key aspects of the new Re-assessment scheme:

- **Time-limit for issuance of notice under section 148 –** In terms of section 149, notice under section 148 can be issued:
  a. within 3 years from the end of the relevant assessment year;

  b. within 10 years from the end of the relevant assessment year, where, the **AO has in his possession 'books of accounts' or 'other documents' or 'evidence'** which reveal that income chargeable to tax, which has escaped assessment amounts to or is likely to amount to Rs.50 lakhs or more for the said year, and is represented in the form of:

     - an asset;
     - expenditure in respect of a transaction or in relation to an event or occasion; **(Inserted vide Finance Act 2022)** or
     - an entry or entries in the books of account **(Inserted Vide Finance Act 2022).**

- Section 149 (1A) provides that, if income escaping assessment in the form of an asset or expenditure in relation to an event or occasion of Rs.50 lakhs or more is in relation to more than one assessment year within the extended period of 10 years, then, notice under section 148 can be issued for every such assessment year. **(Inserted Vide Finance Act 2022).**

Scheme of Re-assessment w.e.f 01.04.2021

Important/Key aspects of the new Re-assessment scheme:

- Section 149 contains grandfathering clause, whereby if time limit for for issuance of notice under section 148 or 153A or 153C has expired on 31.03.2021, in terms of the pre-amended provisions, then notice cannot be issued under the new re-assessment scheme.

- Time limit prescribed under section 149 of the Act shall exclude:
  - the time or extended time allowed to the assessee to respond to show cause notice under section 148A(b); and
  - any period during which the proceedings under section 148A are stayed by an order of any Court.

- If after excluding the aforesaid period, time available for passing order under section 148A(d) is less than 7 days, the remaining time shall be deemed to be extended to 7 days.

Scheme of Re-assessment w.e.f 01.04.2021

Conflict regarding applicability of old re-assessment provisions vis-a-vis new re-assessment provisions for the period 01.04.2021 to 30.06.2021:

- CBDT issued several notifications extending the applicability of old re-assessment provisions from 31.03.2021 till 30.06.2021 as per Taxation and Other Laws Amendment Act, 2020 (TOLA).

- Finance Act 2021 provided that the new re-assessment scheme shall be effective from 01.04.2021.

- Notices under erstwhile re-assessment scheme was issued to various assessee's after 01.04.2021, without following the provisions of new re-assessment scheme (such as without conducting proceedings under section 148A, etc.);

- Due to the conflict / overlap in two different re-assessment schemes, notices issued under section 148 were challenged before High Courts;

Scheme of Re-assessment w.e.f 01.04.2021

Conflict regarding applicability of old re-assessment provisions vis-a-vis new re-assessment provisions for the period 01.04.2021 till 30.06.2021:

The Hon'ble Supreme Court vide order dated 04.05.2022 in the case of UOI vs. Ashish Aggarwal, by exercising powers vested under Article 142 of the Constitution of India, briefly outlined the changes brought about by Finance Act 2021 to the reassessment procedure. The newly-inserted Section 148A provides for certain conditions precedent to be satisfied before issuing a notice initiating reassessment under Section 148 of the Act. **The Supreme Court noted that the procedural safeguards articulated by it in its earlier decision of GVK Driveshafts were streamlined through the amendment.** The SC stressed that the amendments were introduced to streamline the reassessment process and grant further protections to such taxpayers whose assessments were being reopened.

Scheme of Re-assessment w.e.f 01.04.2021

With respect to notices issued after 31.03.2021 under the old law, the Supreme Court provided a one-time relief for them to be considered as notices u/s 148A(b). It was particularly mentioned as under:

"It is true that due to a **bonafide mistake** and in view of subsequent extension of time vide various notifications, the Revenue issued the impugned notices under section 148 after the amendment was enforced w.e.f. 01.04.2021, under the unamended section 148. **In our view the same ought not to have been issued under the unamended Act** and ought to have been issued under the substituted provisions of sections 147 to 151 of the IT Act as per the Finance Act, 2021. **There appears to be genuine nonapplication of the amendments** as the officers of the Revenue may have been under a **bonafide belief** that the amendments may not yet have been enforced. Therefore, we are of the opinion that **some leeway must be shown** in that regard which the High Courts could have done so. Therefore, instead of quashing and setting aside the reassessment notices issued under the unamended provision of IT Act, the High Courts ought to have passed an order construing the notices issued under unamended Act/unamended provision of the IT Act as those deemed to have been issued under section 148A of the IT Act"

Scheme of Re-assessment w.e.f 01.04.2021

However, taking advantage of the situation, the department, vide **Instruction No. 1/2022 dated 11.05.2022** sought provide a different interpretation to the aforementioned judgement with respect to certain points.

Instruction No. 1/2022 dated 11.05.2022 mentions that decision of honourable Supreme Court read with the time-extension provided by TOLA will allow the reassessment notices to **travel back in time** to their original date when the notices were to be issued and then the new section 149 can be applied at that point in time.

Based on the same, for **A.Y. 2016-17 and 2017-18**, fresh notice u/s 148 can be issued under section 149(1)(a) since they are **within the period of three years** from the end of the relevant assessment year. **Specified authority under section 151 of the new law in this case shall be the authority prescribed under clause (i) of that section**.

Pertinent issues arising in the new re-assessment scheme:

Is 148 the new 143(3)?

Yes, it holds true atleast for cases within 3 years.

The essential requirement under the recent provision is that there must be ‘information’ with an AO as detailed in 2nd proviso to section 148 of Income tax Act. Such information should ‘suggest’ that there is ‘income chargeable to tax has escaped assessment.

Pertinent issues arising in the new re-assessment scheme:

- Whether information as mentioned u/s 148 can be refered to as any information?

Wrong Information - GDR Finance And Leasing Private Limited Vs ITO (Delhi High Court)

Pertinent issues arising in the new re-assessment scheme:

- Should a notice u/s 148 be signed or can be issued without any signature?

Unsigned Notice -

(2023) 451 ITR 27 (Bom) PRAKASH KRISHNAVTAR BHARDWAJ vs. ITO

The notice under s. 148 having no signature affixed on it, digitally or manually, the same is invalid and would not vest the AO with any further jurisdiction to proceed to reassess the income of the petitioner.

Pertinent issues arising in the new re-assessment scheme:

- **Notice on Non-existent persons:**

Vikram Bhatnagar v. Assistant Commissioner of Income-tax [2023] 147 taxmann.com 254 (Delhi)[09-11-2022] where the notice neither mentioned the name of the legal heirs nor the PAN number of the said legal heirs and the AO did not take any step to bring all the legal heirs of the deceased Assessee on record at the time of issuance of said notice, the Court held as under:

"11. In the present case as admitted by the Respondent the facts are admitted. The death of the Assessee was duly communicated by his legal heirs (the Petitioner herein). The ITR also duly disclosed that the same has been filed by the legal representative. However, in ignorance of the said facts available on the record the scrutiny proceedings have been wrongly conducted in the name of the deceased Assessee without bringing on record all his legal heirs as per the requirement of law.

12. In the present case, the jurisdictional notice under section 143(2) of the Act was issued against the dead person and the assessment order has also been passed against the dead person on his PAN without bringing on record all his legal representatives, therefore, the said assessment order and the subsequent notices are null and void and are liable to be set aside."

Pertinent issues arising in the new re-assessment scheme:

- Violation of procedure prescribed u/s 148A of the Act
- Proceedings to be quashed
- • Writ Petn. No. 10184 of 2022 (Bom) Anurag Gupta vs. ITO –
- • The reassessment proceedings initiated are unsustainable on the ground of violation of the procedure prescribed under s.148A(b) on account of failure of the AO to provide the requisite material which ought to have been supplied along with the information in terms of the said section

Pertinent issues arising in the new re-assessment scheme:

- • SCN has sought response of the petitioner within a period of three days Sec. 148A(b) of the said Act requires grant of minimum time of seven days to an assessee to file its reply to the show-cause notice.

- (2022) 328 CTR (Jharkhand) 239 JINDAL FORGINGS vs. PCIT & ORS.

Pertinent issues arising in the new re-assessment scheme:

- Alternate remedy

- (2022) 449 ITR 256 (SC) ANSHUL JAIN vs. PCIT - What is challenged before the High Court was the reopening notice under s. 148A(d) of the IT Act, 1961. The notices have been issued, after considering the objections raised by the petitioner. If the petitioner has any grievance on merits thereafter, the same has to be agitated before the AO in the reassessment proceedings.

Pertinent issues arising in the new re-assessment scheme:

- Cannot travel beyond Show Cause Notice
- Catchy Prop-Build (P.) Ltd. v. Asstt. CIT [2022] 448 ITR 671 (Delhi)[17-10-2022]
- If foundational allegation was missing in notice issued under section 148A(b) same could not be incorporated by issuing a supplementary notice

Pertinent issues arising in the new re-assessment scheme:

- EXCEL COMMODITY AND DERIVATIVE PVT. LTD. v. UOI APOT/132/2022; IA No.GA/1/2022
- we find that the assessing officer has indirectly accepted the explanation given by the appellant/assessee that they have not indulged in fictitious derivative transaction. We say so because in the order dated 7th April, 2022 in paragraph 4 therein, the assessing officer alleges that prima facie the appellant/assessee has taken accommodation entry by way of fund transfer from M/s. Brightmoon Suppliers Pvt. Ltd. which is a different company. Thus, the order passed under Clause (d) of Section 148A of the Act is not based on the reason for which notice dated 22nd March, 2022 was issued under Section 148A(b) of the Act. Therefore, the order dated 7th April, 2022 is illegal and has to be held to be wholly unsustainable.

Pertinent issues arising in the new re-assessment scheme:

Lack of application of judicious mind to the material on record. Order quashed and set aside.

Naresh Balchandrarao Shinde v. ITO (2022) 220 DTR 401 / (2023) 320 CTR 449/ (2023)451 ITR 149/ 330 CTR 449 Bom.)(HC)

Pertinent issues arising in the new re-assessment scheme:

An interesting question which came up before a few High Courts was whether THE TAXATION AND OTHER LAWS (RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS) ACT, 2020 (TOLA) would have the effect of extending the time barring provisions beyond what was prescribed under the Primary legislations?

Several High Courts have held that enacting the provisions in Taxation and Other Laws (Relaxation & Amendment of Certain Provisions) Act, 2020, was not the permissible device whereby the time limit could be legitimately extended for the purpose of issuing notices u/s 148, which were otherwise barred in terms of Section 149, as it exists in the old regime.

Pertinent issues arising in the new re-assessment scheme:

Application of TOLA, 2000

Whether notices issued in case of A.Y. 2013-14 & 2014-15 can be called time barred or whether TOLA comes to the rescue of department?

SITA CREATION PRIVATE LIMITED Versus THE INCOME TAX OFFICER, WARD 2(1)(3), SURAT [2023] 149 taxmann.com 357 (Gujarat)[27-03-2023]

Pertinent issues arising in the new re-assessment scheme:

- As per the old regime, for issuance of notice under section 148, in relation to Assessment Year 2013- 14, the outer time limit would expire on 31.03.2020 and for issuing such notice in relation with Assessment Year 2014-15, the time period would conclude on 31.03.2021.
- **Enacting the provisions in Taxation and Other Laws (Relaxation & Amendment of Certain Provisions) Act, 2020, was not the permissible device whereby the time limit could be legitimately extended for the purpose of issuing Notices under Section 148, which were otherwise barred in terms of Section 149, as it exists in the old regime.**
- **The Taxation and Other Laws Act, 2020 was rightly viewed to be a secondary legislation. It was therefore held that secondary legislation would not override the principal legislation-the Finance Act, 2021.**

Pertinent issues arising in the new re-assessment scheme:

- It is to be noted that **while enacting the Finance Act, 2021, Parliament was aware of the existing statutory laws both under the Act as amended by the Finance Act, 2021 as also the ordinance and the TOLA Act and Notification issued there under**. However, the new scheme for reassessment which was made effective from 01.04.2021 does not have any saving clause. This brings an end to the possibility of any fresh proceedings being initiated under the unamended reassessment provisions after 01.04.2021. Finance Act, 2021 also did not contain savings clause and since the legislature through Finance Act, 2021 and TLA Act did not include any intention to protect and extend the erstwhile scheme of section 148 of the Act. **The life of erstwhile scheme of 148 cannot be elongated.** The principle that would also employ is that the substitution for omit and obliterate the pre-existing provision and in absence of any saving clause either under the ordinance or the TLA Act the Finance Act, 2021 the presumption is available for the old provision to continue beyond 31.03.2021.

Pertinent issues arising in the new re-assessment scheme:

- TOLA does not extend the timelines specified under the Act and hence if a case falls under 4 years, due to TOLA, the same cannot be extended even though approval was taken beyond 4 years but by an authority who can approve only for cases upto 4 years. The same has been held by JM Financial case by Honourable Bombay High Court.

MISCELLANEOUS ISSUES

1. When Assessee has not provided email ID but provided physical address:

Mrs. Chitra Supekar v. ITO [2023] 149 taxmann.com 26 (Bombay)[15-02-2023]

2. Material relied upon by the Department must be provided to the Assessee:

Prakashchandra Chhotalal Shah v. ITO [2023] 149 taxmann.com 100 (Gujarat)[14-02-2023]

3. When time is available with department but still assessment is completed in haste:

Aditya Hareshbhai Sonpal v. ITO [2023] 148 taxmann.com 13 (Gujarat)[16-01-2023]

MISCELLANEOUS ISSUES

4. Reply of Assessee not considered – order u/s 148A(d) quashed:

Swastik Wire Products v. PCIT [2023] 149 taxmann.com 47 (Himachal Pradesh)[26-12-2022]

5. DIN mentioning in notice – Mandatory:

Circular no. 19/2019 dated 14.08.2019 [in short, “2019 Circular”], sets out the manner in which Document Identification Number [in short, “DIN”] is required to be generated while communicating a notice, order, summon, letter and any correspondence issued by the Income Tax Department, i.e., the Revenue.

MISCELLANEOUS ISSUES

6. Copy of approval from specified authority: - Must be provided by the Authority

Even though, normally it is mentioned in the 148A(d) order, it is the duty of the authority to provide the copy of the approval of the specified authority. It is important since we must know that such approval was provided after application of mind.

7. In connection with notice issued u/s 148 for A.Y. 2013-14 on 31.03.2021: Under old provision – Equally applies to the new provisions in my opinion.

Anwar Mohammed Shaikh v. ACIT [2023] 148 taxmann.com 288 (Bombay)[13-03-2023]

MISCELLANEOUS ISSUES

- **Instruction dt. 27.01.2023: Reassessment to be completed by 31.05.2023**
- All reassessment cases in consonance with the Apex Court judgment of Ashish Agarwal shall be completed on or before 31.05.2023.
- All such cases have a due date of 31.03.2024 since any reassessment must be completed within 12 months from the end of the year in which the notice u/s 148 is served.
- It is pertinent to mention that CBDT circulars only apply to the department and the Assessee may not be coerced to comply with the same when time is statutorily available under the Act.

FACELESS ASSESSMENT OF INCOME ESCAPING ASSESSMENT

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 had inserted a new section – 151A in the Income-tax Act, 1961 with regard to Faceless Assessment of Income Escaping Assessment w.e.f. 01.11.2020.

In exercise of the powers conferred by sub-sections (1) and (2) of section 151A of the Income-tax Act, 1961, the Central Government made a scheme i.e, e-Assessment of Income Escaping Assessment Scheme, 2022, which shall come into force from 29.03.2022.

Writ Petition was filed before Hon'ble High Court of Telangana in the case of M/s Suryalakshmi Cotton Mills Ltd. vide WP No. 37414 of 2022, wherein Hon'ble High Court considered the plea and granted interim relief in the form of stay of the impugned notice – 148 notice.

THANK YOU

(FOR ANY QUERIES – KINDLY SEND A MAIL ON THE BELOW MENTIONED MAIL ID)

- **Adv. Sashank Dundu**
- **(9004216690)**
- **dmmassociateslegal@gmail.com**

Discussion on Penalties Under the IT Act, 1961 [Chapter XXI][Sec 270 to Sec 275][AY 2024-25]

Speaker : Talluri Rajendra Prasad (RP)

Date: 12th May 2023

TRP & CO

Agenda

Part A: General Issues relating to Penalties

Part B: Some Penalties discussed in detail

1. Provisions of Sec 270A
2. Provisions of Sec 271AAB
3. Provisions of Sec 271AAC
4. Provisions of Sec 271AAD
5. Provisions of Sec 271AAE
6. Provisions of Sec 271DB
7. Provisions of 271J

TRP & CO

General Issues relating to Penalties Under the IT Act, 1961

TRP & CO

Issue # 1: Is there any quantum restriction on the ITO / AC / DC for levy of penalty? [Sec 274(2)]

The ITO can impose the penalty up to Rs10,000; **Where it exceeds Rs 10,000/-, then the penalty can be imposed only with the prior approval of the JCIT.**

Likewise, the AC / DC can impose penalty up to Rs 20,000; **Where it exceeds Rs 20,000/-, then the penalty can be imposed only with the prior approval of the JCIT.**

Issue # 2: Reasonable Cause [Sec 273B]

Notwithstanding anything contained in the provisions of [clause (b) of sub-section (1) of] [section 271, section 271A, [section 271AA,] section 271B [, section 271BA], [section 271BB,] section 271C, [section 271CA,] section 271D, section 271E, [section 271F, [section 271FA,] [section 271FAB,] [section 271FB,] [section 271G,]] [section 271GA,] [section 271GB,] [section 271H,] [section 271-I,] [section 271J,] clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA] or [section 272B or] [sub-section (1) [or sub-section (1A)] of section 272BB or] [sub-section (1) of section 272BBB or] clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, **no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure.**

What are not there in the above list?

270A: Misreporting of income cases; [There is a separate provision providing immunity for under-reporting]

271AAB: Penalty in search cases related to specified previous year [Year of search; PY which has ended before the date of search, but the due date for filing return of income U/S 139(1) is not yet over]

271AAC: Penalty w.r.t additions made under Sec 68,69 etc,. [Separate immunity is available if the income is included in the return, etc,.]

Sec 271AAD: Penalty for false entry in the books of account;

Sec 271AAE: Benefits to related persons in the case of trusts, etc

Sec 271DA and 271DB: There are separate provisos in these sections itself which provide that penalty is not imposable if the person proves that 'there were good and sufficient reasons for the contravention.' [271DA is for non complying with 269ST; 271DB is for non complying with 269SU.]

Sec 271FAA: Penalty for furnishing inaccurate SFTRA [Rs 50K penalty]

Sec 271K : Failure by Trusts etc to submit the list of donors to the department / 80G certificate to the donees [Rs 10K to Rs 1 Lakh penalty]

Sec 272A(1)(a) and (b): Fails to state Truth of any matter touching the subject of his assessment / Refuses to sign statement made by him [Rs 10K penalty]

Issue # 3: What is the time limit for the purposes of completing the penalty proceedings?

Particulars	Time limit for passing the penalty order
Where an appeal has been preferred against the assessment order to ITAT. [Sec 275(1)(a)] **[This arises in a case where the matters are directly taken to ITAT like orders arising on account of proceedings before the DRP.]**	♠ End of the financial year in which assessment proceedings are completed; Or ♠ Six months from the end of the month in which order of ITAT is received by the CIT / CCIT / Principal CIT / Principal CCIT Whichever is later.
Where an appeal has been preferred against the assessment order to CIT (A). [Proviso to Sec 275(1)(a)]	♠ End of the financial year in which assessment proceedings are completed; Or ♠ One year from the end of the financial year in which order of JC (A) or CIT (A) is received by CIT / Principal CIT / CCIT / Principal CCIT Whichever is later.
Where the relevant assessment or other order is the subject matter of revision U/S 263 or U/S 264. [Sec 275(1)(b)]	Six months from the end of the month in which such revision order is passed.
Any other case i.e where no appeal / no revision is preferred. [Sec 275(1)(c)]	♠ End of the financial year in which assessment proceedings are completed; Or ♠ Six months from the end of the month in which penalty proceedings are initiated Whichever is later.
Time limits for passing penalty order on account of the fact that the original assessment order is revised on account of appellate order or revisionary order etc,. [Sec 275(1A)]	An order imposing or enhancing or reducing or cancelling the penalty or dropping the proceedings for the imposition of penalty may be passed on the basis of assessment as revised by giving effect to such order of the JC (A) or CIT (A), or the ITAT or the HC or the SC or order of revision U/S 263 or U/S 264. It is to be passed within a period of 6 months from the end of the month in which the order of the JC (A) or CIT(A) or the ITAT or the HC or the SC is received by the CCIT / CIT / Principal CIT / Principal CCIT or the order of revision U/S 263 or U/S 264 is passed.

Note: In computing the period of limitation for the purposes of this section, following time periods shall be excluded:

Opportunity of being reheard: The time taken in giving an opportunity to the assessee to be reheard under the proviso to Sec 129;

Stay period: Any period during which a proceeding under this chapter for the levy of penalty is stayed by an order or injunction of any court;

Immunity granted U/S 245H: Any period during which the immunity granted U/S 245H is in force.

Issue # 4: What are the remedies available against penalties? [Apart from Appeal / Revision mechanism] [Waiver of Penalty - Sec 273A]

Particulars	Sec 273A(1)	Sec 273A(4)
Penalty that can be waived	CIT / Principal CIT can waive / reduce penalty U/S 271(1) (c) or 270A	CIT / Principal CIT can waive / reduce **any penalty** including penalty U/S 271(1) (c) or 270A.
Application	CIT / Principal CIT can act suomoto or on an application received from the assessee.	CIT / Principal CIT can act only upon receipt of an application from the assessee.
Any other relief possible after the relief under this section	After a favourable order U/S 273A(1), no further relief is possible U/S 273A(1) or U/S 273A (4).	After a favourable order U/S 273A(4), relief is possible U/S 273A(1) or U/S 273A (4).
Stay of penalty proceedings	CIT / Principal CIT cannot stay the penalty proceedings U/S 273A(1).	CIT / Principal CIT can stay the penalty proceedings U/S 273A(4).
Approval	Prior approval of CCIT / Principal CCIT or DGIT / Principal DGIT required if the concealed income exceeds Rs.5 lacs.	Prior approval of CCIT / Principal CCIT or DGIT / Principal DGIT required if penalties exceed Rs. 1 lac.
Conditions to be fulfilled	♠ Co-operation ♠ Payment ♠ True and Full disclosure	♠ Genuine Hardship ♠ Co-operation

Issue # 4: What are the remedies available against penalties? [Apart from Appeal / Revision mechanism] [Waiver of Penalty - Sec 273A] [Contd---]

Note on Sec 273A(1) and Sec 273A(4): Sec 273A(3) prohibits the assesse from applying for and obtaining relief U/S 273A(1) more than once; but in one application he can collectively apply for relief in respect of different defaults committed for different assessment years at different times. The prohibition of Sec 273A(3) operates only where an order has been 'in favour' of the person concerned; and therefore, if his application for waiver or reduction of penalty or interest for a particular year is rejected, he can apply again U/S 273A(1) for another year. **[Shree Singhvi Vs UOI] [187 ITR 219]**

On the other hand, the power U/S 273A(4) is in addition, and not in the alternative, to the power U/S 273A(1). herefore, the person who has applied to the CIT U/S 273A(1) is entitled to apply to him again U/S 273A(4), and such application is not precluded by Sec 273A(3) which is meant only to prevent the applicant from obtaining the relief for a second time U/S 273A(1).

Finality of order passed U/S 273A: The orders passed under this section [i.e both the above cases] are final and no appeal or reference is possible against such orders.

Time Limit for passing orders [Sec 273A(4A)]: The order U/S 273A(4), either accepting or rejecting the application in full or in part, shall be passed within a period of 12 months from the end of the month in which the application under Sec 273A(4) is received by the PCIT / CIT.

Issue # 5: Relevance of MensRea:

Meaning: Mensrea is an evil state of mind. It is the state of mind of a culprit. "It is said to be present if a person does something wrong deliberately knowing that his action is against law, i.e the person had a guilty mind while committing the act."

Mensrea in the context of penalty U/S 271(1)(c): Sec 271(1)(c) penalty is neither a criminal liability nor a quasi criminal liability but a civil liability. Such liability being civil in nature, mensrea is not essential. While considering an appeal against an order made under section 271(1)(c) what is required to be examined is the record which the officer imposing the penalty had before him and if that record can sustain the finding there had been concealment, that would be sufficient to sustain the penalty. **[Dharamendra Textile Processors Vs UOI] [2008] [166 Taxman 65][SC]**

In the case of Dharamendra Textile Processors, the Apex Court was considering Section 11AC of the Central Excise Act. In Section 11AC, the words used are **"fraud, collusion or any wilful misrepresentation or any wilful misstatement or suppression of facts" and "intent to evade payment of duty."** In that view of the matter, the mens rea will play an important role. On the other hand, Sec 45(6) of the Gujarat Sales Tax Act, 1969 used the words 'there shall be levied on such dealer a penalty not exceeding one and one half times the difference". Hence, MENAREA does not have any role to play. **[Para 6.13 of the Apex Court's judgement in Civil Appeal No 2481 of 2022 in 'State of Gujarat and Anr Vs M/s Saw Pipes Ltd]**

Mensrea in the context of Sec 270A: Taking a cue from the above Apex Court decision in M/s Saw Pipes Ltd, as the wordings in Sec 270A never used the terms **'Wilful',** but the terms used are under reporting or mis-reporting {'Misrepresentation of facts, failure to record, etc,.'} a view is possible that Mensrea is not relevant for the purposes of Sec 270A(9) or Sec 270A(1).

Also, the Apex Court in the above case {M/s Saw Pipes Ltd} remarked that when the language employed is 'penalty shall be leviable-----', then there is no discretion available to the authorities except to levy the penalty in those cases. [Para 6.11]

Penalties in detail [Provisions of Sec 270A]

Sec 270A: Penalty for under reporting and misreporting of income

Who can levy penalty U/S 270A?

The Assessing Officer or JC(Appeals) or CIT (Appeals) or Principal CIT or CIT **may,** during the course of any proceeding under the Act, **direct that any** person who has under reported his income shall be liable for penalty. This amount shall be in addition to the tax, if any. **[Sec 270A(1)]**

Quantum of Penalty as given in Sec 270A(7) and Sec 270A(8):

Situation	Quantum of Penalty
It is a Case of Under-Reported Income	50% of the tax payable on under-reported income.
Where Under Reporting of Income results from Mis-Reporting of income by any person	200% of the tax payable on under-reported income.

Sec 270A: Penalty for under reporting and misreporting of income [Contd---]

Meaning of Under-Reporting of Income [Sec 270A(2)]:

A person shall be considered to have under-reported his income if,

(a) The assessed income is greater than the income determined upon processing under section 143(1)(a), where return is filed;

(b) The income assessed is greater than the maximum amount not chargeable to tax, where no return of income is filed;

(c) The income assessed is greater than the income assessed or reassessed immediately before such reassessment;

(d) The amount of deemed total income assessed or reassessed under section 115JB/115JC is greater than the deemed total income determined in the return processed under section 143(1)(a);

(e) The amount of deemed total income assessed as per the provisions of section 115JB/115JC is greater than the maximum amount not chargeable to tax, where no return of income has been filed;

(f) The amount of deemed total income reassessed as per the provisions of section 115JB/115JC is greater than the deemed total income assessed or reassessed immediately before such reassessment;

(g) The income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

Sec 270A: Penalty for under reporting and misreporting of income [Contd----]

Exclusions from Under-Reporting of Income [Sec 270A(6)]: The under-reported income, for the purposes of this section, shall not include the following, namely:—

(a) the amount of income in respect of which the assessee offers **an explanation** and the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, is satisfied that the explanation is **bona fide** and the assessee has disclosed all the material facts to substantiate the explanation offered;

(b) the amount of under-reported income determined on the basis of **an estimate,** if the accounts are correct and complete to the satisfaction of the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, but the method employed is such that the income cannot properly be deduced therefrom;

(c) the amount of under-reported income determined on the basis of an estimate, **if the assessee has, on his own, estimated a lower amount of addition or disallowance** on the same issue, has included such amount in the computation of his income and has disclosed all the facts material to the addition or disallowance;

(d) the amount of under-reported income represented by any addition made in conformity **with the arm's length price determined by the Transfer Pricing Officer,** where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction under Chapter X, and, disclosed all the material facts relating to the transaction; and

(e) the amount of undisclosed income referred to in section 271AAB. [Search related penalty for a specified previous year]

Sec 270A: Penalty for under reporting and misreporting of income [Contd---]

Cases where the underreported income are treated as Misreporting of Income and hence enhanced penalty is leviable in such cases. [Sec 270A(9)]

(a) Misrepresentation or suppression **of facts;**

(b) **Failure to record investments** in the books of account;

(c) **Claim of expenditure** not substantiated by any evidence;

(d) Recording of **any false entry** in the books of account;

(e) **Failure to record** any receipt in books of account having a bearing on total income; and

(f) **Failure to report** any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.

In addition to the above, where the provisions of Sec 56(2)(viib) have not been applied to a company on account of fulfilment of conditions specified in the notification issued in that regard and such company fails to comply with any of those conditions, then, any consideration received for issue of share that exceeds the fair market value of such share shall be deemed to be the income of that company chargeable to income-tax for the previous year in which such failure has taken place and, it shall also be deemed that the company has under reported the said income in consequence of the misreporting referred to in sub-section (8) and sub-section (9) of section 270A for the said previous year.

Sec 270AA: Immunity from Penalty, etc,. [Only for under reporting and not for mis reporting]

Cases where the underreported income are treated as Misreporting of Income and hence enhanced penalty is leviable in such cases. [Sec 270A(9)]

Sec 270AA(1): An assessee may make an application to the Assessing Officer to grant immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or section 276CC, if he fulfils the following conditions, namely:—

a) the tax and interest payable as per the order of assessment or reassessment U/S 143(3) or U/S 147 had been paid within the period specified in such notice of demand; and

b) No appeal against the aforesaid assessment order has been filed.

Sec 270AA(2): The application for grant of immunity shall be made in the prescribed form **[Form 68]** within one month from the end of the month in which the aforesaid assessment order U/S 143(3) or U/S 147 is received.

Sec 270AA(3): Immunity shall not be granted where the penalty proceedings are initiated on account of 'Mis-Reporting of Income' as referred to in Sec 270A(9). In other cases i.e in the case of 'Under-Reporting of income', the immunity can be granted from imposition of penalty U/S 270A and initiation of prosecution proceedings U/S276C.

Penalties in detail [Provisions of Sec 271AAB]

Sec 271AAB(1A): Penalty where search has been initiated

Penalty for a specified previous year [Sec 271AAB(1A)]

Specified previous year" means the previous year—

(i) Which has ended before the date of search, but the date of furnishing the return of income under sub-section (1) of section 139 for such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the date of search; or

(ii) In which search was conducted;

30% of the undisclosed income: (a): Penalty is a sum computed at the rate of thirty per cent of the undisclosed income of the specified previous year, if the assessee—

(i) in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived;

(ii) substantiates the manner in which the undisclosed income was derived; and

(iii) on or before the specified date—

(A) pays the tax, together with interest, if any, in respect of the undisclosed income; and

(B) furnishes the return of income for the specified previous year declaring such undisclosed income therein;

60% of the undisclosed income: (b): Penalty is a sum computed at the rate of sixty per cent of the undisclosed income of the specified previous year, if it is not covered under the provisions of clause (a).]

Penalties in detail [Provisions of Sec 271AAC]

Sec 271AAC: Penalty in respect of certain income

Penalty for additions made U/S 68, 69 etc,. [10% of the tax payable U/S 115BBE(1)(i)] [i.e 10% of 60%]

The Assessing Officer or the JC (Appeals) or the Commissioner (Appeals) may, notwithstanding anything contained in this Act other than the provisions of section 271AAB, direct that, **in a case where the income determined includes any income referred to in** section 68, section 69, section 69A, section 69B, section 69C or section 69D for any previous year, the assessee shall pay by way of penalty, in addition to tax payable under section 115BBE, a sum computed at the rate of ten per cent of the tax payable under clause (i) of sub-section (1) of section 115BBE:

Provided that no penalty shall be levied in respect of income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D to the extent such income has been included by the assessee in the return of income furnished under section 139 and the tax in accordance with the provisions of clause (i) of sub-section (1) of section 115BBE has been paid on or before the end of the relevant previous year.

No penalty under the provisions of section 270A shall be imposed upon the assessee in respect of the income referred to in sub-section (1).

Penalties in detail [Provisions of Sec 271AAD]

Sec 271AAD: Penalty for false entry, etc., in books of account.

Penalty for false entries / omissions [100% of the amount involved; Advisors are also liable]

(1) Without prejudice to any other provisions of this Act, if during any proceeding under this Act, it is found that in the books of account maintained by any person there is—

(i) a false entry; or

(ii) an omission of any entry which is relevant for computation of total income of such person, to evade tax liability,

the Assessing Officer or the JC (Appeals) or the Commissioner (Appeals), may direct that such person shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry.

(2) Without prejudice to the provisions of sub-section (1), the Assessing Officer or the JC (Appeals) or the Commissioner (Appeals) may direct that any other person, who causes the person referred to in sub-section (1) in any manner to make a false entry or omits or causes to omit any entry referred to in that sub-section, shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry.

Explanation.—For the purposes of this section, "false entry" includes use or intention to use—

(a) forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or

(b) invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or

(c) invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist.]

Penalties in detail [Provisions of Sec 271AAE]

Sec 271AAE: Benefits to Related Persons

Benefits to related persons by Trusts, etc,. [Penalty = 100% of the Benefit extended (First time); 200% of the Benefit extended (Subsequent time)]

Without prejudice to any other provision of this Chapter, if during any proceedings under this Act, it is found that a person, being any fund or institution referred to in sub-clause (iv) or any trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) of clause (23C) of section 10, or any trust or institution referred to in section 11 has violated the provisions of the twenty-first proviso to clause (23C) of section 10, or clause (c) of sub-section (1) of section 13, as the case may be, the Assessing Officer may direct that such person shall pay by way of penalty—

(a) a sum equal to the aggregate amount of income applied, directly or indirectly, by such person, for the benefit of any person referred to in sub-section (3) of section 13, where the violation is noticed for the first time during any previous year; and

(b) a sum equal to two hundred per cent of the aggregate amount of income of such person applied, directly or indirectly, by that person, for the benefit of any person referred to in sub-section (3) of section 13, where violation is noticed again in any subsequent previous year.

Penalties in detail [Provisions of Sec 271DB]

Sec 271DB: Penalty for failure to comply with provisions of section 269SU.

Penalty for failure to comply with provisions of section 269SU (Say facility to accept e-payments not provided) [Penalty = Rs 5000 per day of default]

(1) If a person who is required to provide facility for accepting payment through the prescribed electronic modes of payment referred to in section 269SU, fails to provide such facility, he shall be liable to pay, by way of penalty, a sum of five thousand rupees, for every day during which such failure continues:

Provided that no such penalty shall be imposable if such person proves that there were good and sufficient reasons for such failure.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner of Income-tax.

Note:

Sec 269SU: Acceptance of payment through prescribed electronic modes: Every person, carrying on business, shall provide facility for accepting payment through prescribed electronic modes, in addition to the facility for other electronic modes, of payment, if any, being provided by such person, if his total sales, turnover or gross receipts, as the case may be, in business exceeds fifty crore rupees [More than Rs 50 Crores] during the immediately preceding previous year.

Penalties in detail [Provisions of Sec 271J]

Sec 271J: Penalty for furnishing incorrect information in reports or certificates.

Penalty for furnishing incorrect information in reports or certificates (Say CA issued a certificate with incorrect information = Rs 10,000 penalty)

Without prejudice to the provisions of this Act, where the Assessing Officer or the Commissioner (Appeals), in the course of any proceedings under this Act, finds that an accountant or a merchant banker or a registered valuer has furnished incorrect information in any report or certificate furnished under any provision of this Act or the rules made thereunder, the Assessing Officer or the Commissioner (Appeals) may direct that such accountant or merchant banker or registered valuer, as the case may be, shall pay, by way of penalty, a sum of ten thousand rupees for each such report or certificate.

Explanation.—For the purposes of this section,—

(a) "accountant" means an accountant referred to in the Explanation below sub-section (2) of section 288;

(b) "merchant banker" means Category I merchant banker registered with the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(c) "registered valuer" means a person defined in clause (oaa) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).]

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