

ADDITIONAL TOPICS FOR CMA REGULAR

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Chapter 2 : Income Tax Authorities

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2. INCOME TAX AUTHORITIES

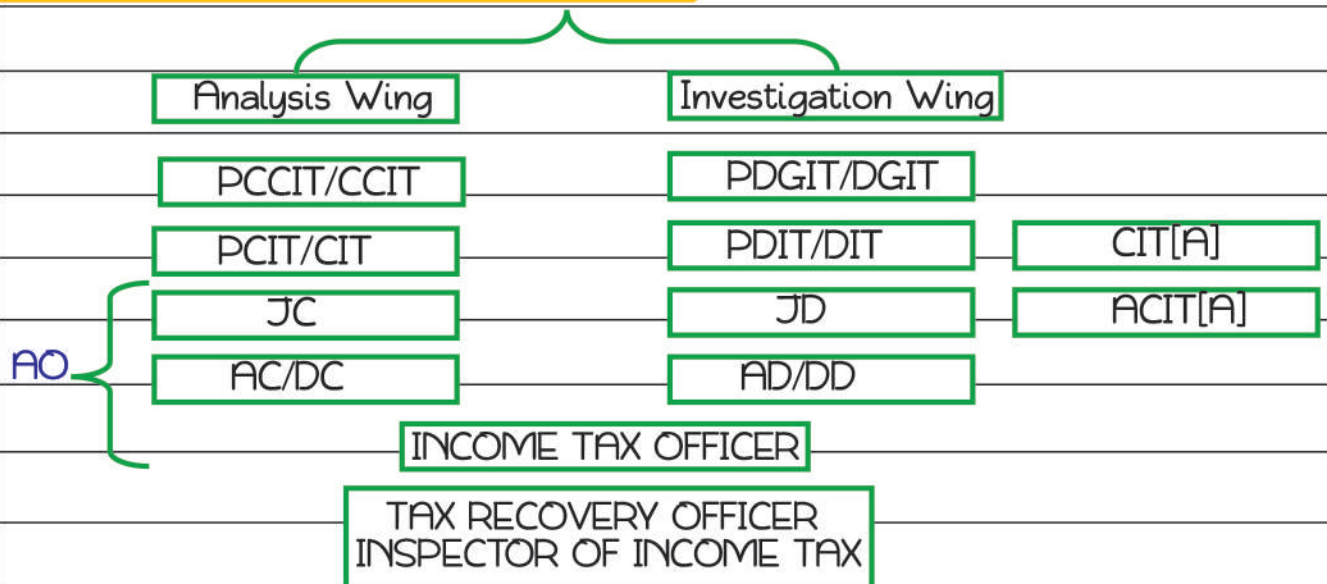
Space for Important Points / Notes

2. INCOME TAX AUTHORITIES

Section List

Sec.116	Income tax Authorities	Following Sections Got Omitted 121/121A/122/123/ 125/126/128
Sec.117	Appointment of Income tax Authorities	
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Sec.119	Power of Income tax Authorities	
Sec.120	Jurisdiction of Income tax Authorities	
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Sec.127	Transfer of cases	
Sec.220	change in incumbent of Office	

Sec.116 Income Tax Authorities



Sec.117 Appointment of Income Tax Authorities

- (1) The CG may appoint such persons as it thinks fit to be income-tax authorities.
- (2) CG regulating the conditions of service of persons in public services and posts, the CG may authorize CBDT/ DGIT/ CCIT/ DIT/CIT, to appoint income-tax authorities below the rank of an AC/DC.

Sec.118 Control Of Income Tax Authorities

Board may, by notification in the Official Gazette, direct that any income tax authority specified in the notification shall be subordinate to such

2. INCOME TAX AUTHORITIES

other income tax authority as may be specified in such notification.

Romancing the taxation way:

Board may, by notification



Any specified authority shall be subordinate to another authority

Sec.119 Powers Of Income Tax Authorities (Only relevant part)

Sec.119(1) Instruction to subordinate authorities

The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board :

When Instruction cannot be Issued to Subordinate

1. So as to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or
2. So as to interfere with the discretion of the Commissioner (Appeals) in the exercise of his appellate functions.

Romancing the taxation way:

Board [CBDT] may issue

- Notification
- Order
- Circular [Direction]

For the proper administration of this Act,

However 2 order can't be issued

1. To make / Dispose a particular Assessment in a particular manner
2. Interfere with discretion of CIT[A] in exercise of his appellate functions.

My Notes:

- a) Decision of Board are not binding on Courts [Delhi Flour Mills]
- b) Circular Issued by Board are binding on Dept [Paper Product Ltd v. CCE]

2. INCOME TAX AUTHORITIES

- c) Where a circular is issued after the date on which order is passed the later issued circular can have no application to the earlier passed order unless it is retrospective [Rajarajeswari Mills]
- d) Where circular is issued after the date completion of Assessment it cannot be used Even in Reassessment.[Peria Karamalai Tea v CIT]

Sec.119(2)(a) Orders issued by way of relaxation of certain provisions


Without prejudice to the general Provision of Sec. 119 (1) it considers it necessary or expedient so to do the board from time to time issue certain orders Instruction if Conditions are Satisfied.

- 1.If it is necessary for proper and efficient management of assessment and collection of Revenue.
- 2.Such order can be issued whether by way of relaxation or otherwise
- 3.Such order is not prejudicial to Assessee
- 4.Such orders are followed by Income Tax Authorities.
- 5.If board is if the opinion then it could be Published

Sec.119(2)(b) Orders giving extension of time limit

1. The Board may, for avoiding genuine hardship in any case ,by general or special order, authorise any income-tax authority to admit an application or claim for any exemption, deduction, refund or any other relief (Eg: condonation of Delay in filling Return) under this Act after the expiry of the period specified by making such application or claim & deal with the same on merits in accordance with law.
2. Such order cannot be issued to a Commissioner (Appeals)]

Romancing the taxation way

Board May By Order 

Admit Belated Application
Allow Exemption /deduction
Allow Refund
Provide Any other Releif

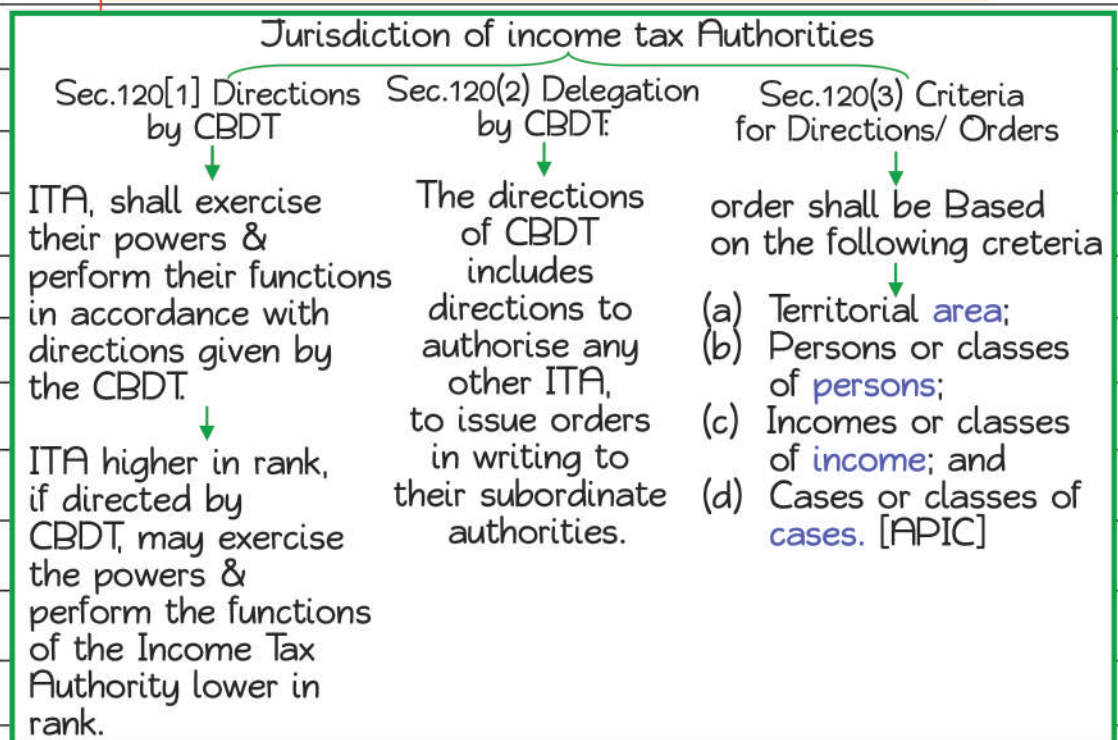
but Such order can't be issued to CIT[A]

2. INCOME TAX AUTHORITIES

Sec.119A Taxpayer's Charter [FA'20]

The Board shall adopt & declare a Taxpayer's Charter & issue such orders, instructions, directions or guidelines to other income-tax authorities as it may deem fit for the administration of such Charter.

Sec.120 Jurisdiction of ITA (Only relevant)

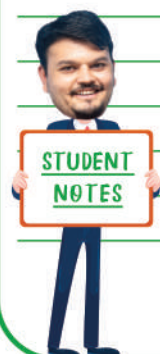


Sec.124 Jurisdiction of Assessing officer[AO]

Sec 124(1) - Jurisdiction

AO is vested with Jurisdiction as specified by CBDT, however it shall have following jurisdiction :

having 1 place of Business /profession	Place of Business shall be Jurisdiction
Business in more than one place	Principal Place of Business
Not having Business	Place of Residence



2. INCOME TAX AUTHORITIES

Sec 124(5) - Special Orders

Every AO shall have all the powers in respect of all income accruing / arising / received within his jurisdiction.

Sec.124(2) Dispute regarding jurisdiction:

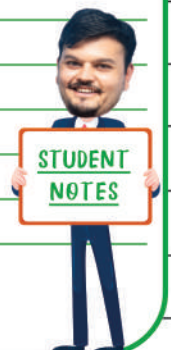
Any question relating to Jurisdiction shall be determined by DGIT/CCIT/CIT. If both the AO have different DGIT/CCIT/CIT then it shall be decided mutually. If both the authorities are not in agreement matter shall be decided by CBDT.

Sec.124[3] Right of Assessee to challenge jurisdiction where

Return filed	Within 1m from date of service of notice u/s 142(1) /143(2)/ before completion of Assessment, Whichever is earlier.
Return not filed	after the expiry of time limit allowed by notice u/s 142(1) or Sec.148 for filling the ROI or within the time allowed in SCN issued seeking as to why a BJA u/s 144, Whichever is earlier
Search is done u/s 132	Within 1m of service of notice u/s 153A/153C(2) or before completion of Assessment whichever is earlier

Sec.127 Transfer of cases

1. For the purpose of Sec.120& Sec.127, Case means, in relation to any person whose name is specified in any order or direction issued
2. POWER OF TRANSFER: The PDGIT/DGIT/PCCIT/CCIT/PCIT/CIT
3. RIGHTS OF ASSESSEE:
 - a) Before transferring the case, the assessee shall be given an opportunity of being heard.
 - b) It is not necessary to give an opportunity to the



2. INCOME TAX AUTHORITIES

assessee, if the case is transferred between Assessing Officers within the same city, locality or place.

c) **Ajanta Industries vs CBDT** if reason for transfer of case is not specified then such transfer shall be invalid.

d) In case of transferred between two cities then approval of CCIT/DGIT must be obtained .

4. Where the Assessing Officer from whom the case is transferred and the transferee Assessing Officer do not fall under the control of the same DGIT/ CCIT/ CIT, then both the jurisdictional DGIT/ CCIT/ CIT shall mutually decide and pass the necessary transfer order.
If such jurisdictional DGIT/ CCIT/ CIT are not in agreement, then the matter shall be decided by CBDT or any authority authorised by CBDT.

5. Requirement of fresh notice: It is not necessary to re-issue any notice by the Transferee AO, which is already issued by the previous AO.

6. Stage at which case can be transferred

- | |
|---|
| 1. ROI Processed - not Possible |
| 2. Notice Send - Possible |
| 3. Assessment Started - Possible |
| 4. Assessment completed - Possible
but final order pending |
| 5. Assessment completed & - Not
order Issued Possible |

“ case can be transferred at any stage of Proceeding”

Sec.129 Change in incumbent of office

1. Whenever an ITA ceases to exercise jurisdiction & is succeeded by another who has and exercises jurisdiction, the ITA so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor.



2. INCOME TAX AUTHORITIES

2. The assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be reopened or that before any order of AO is passed against him, he be reheard.

[Notice shall be issued for change of incumbent of office, if the same is not issued Assessment would be bad in law - Automotive Tyre Manufacturing Association)(SC)]

Sec.220[6] Duties of AO

1. Treat the Assessee not in default in respect of amount in dispute even though time limit for payment is expired.
2. AO Should apply his mind to the relevant factors such as assessment history of the assessee, his conduct and cooperation to the department, the point raised in appeal
3. Arbitrator required : He must remember that he is not the final arbiter of the dispute involved, but only the first amongst the statutory authorities.
[Rajan Nair v ITO 1987]
4. The power u/s 220(6) is coupled with the duty to take into consideration all relevant ground. It should be exercised reasonable and fairly.

Different Authorities & there Power [Self read]

CIT	CIT [A]
<ol style="list-style-type: none"> 1. He is required to perform such functions as may be assigned 2.Registration of Trust or Institution Sec.12A 3.Transfer of cases[Sec.127] 4.Search and seizure[Sec.132] 5.Revision of Order 6.Reduction or waiver of penalty 7.Setoff of refund against tax payable [Sec.245] 8.Granting Sanction for reopen of assessment after 4 years [Sec.151] 	<ol style="list-style-type: none"> 1.Power regarding discovery,production of evidence Sec.131. 2.power to call for Information. 3.Disposal of Appeal. 4.Power to Impose Penalty. 5.Setoff and refund of Tax Payable. 6.Inspection of Register u/s134.

2. INCOME TAX AUTHORITIES

Relevant Case Laws

Case Law	Regen Powertech Private Ltd v. CBDT & Another [2019] (Mad)
Issue Involved	Can the CBDT refuse to condone delay in filing the tax return, where such delay was caused by circumstances beyond the control of the assessee?
Decision by Court	<p>The assessee company was engaged in the manufacture of wind energy generators, Assessee File the ROI with a delay of 37 days. The assessee contended that the delay was on account of obtaining the audit report required under section 44AB. The appointed firm of chartered accountants (SRB) had some reservations regarding the valuation of the assessee company's business transfer which was communicated to the assessee only on the last day of filing the audit report. In such circumstances, the assessee had to look for an alternative auditor which could also be done subject to a "No Objection Certificate" from SRB. The "No Objection Certificate" was only issued after which ROI was filled. The assessee contends that the delay in filing the return was beyond its control.</p> <p>Provisions: CBDT has power to condone the delay u/s 119</p> <p>Conclusion: HC Allowed the condonation of delay & opined that the CBDT should have exercised its discretion in a proper manner and condoned the delay.</p> <p>Note: belated Return can also be revised.</p>

Know Your Exams

- P.1 Examine the correctness of the statement "The jurisdiction of an AO cannot be objected by the assessee".[M-08]
- P.2 "The AO while acting under section 220(6) should not act as mere tax-gatherer but as a quasi-judicial authority."[M-92]

2. INCOME TAX AUTHORITIES

Multiple Choice Questions

- | | | | | | | | | | | | |
|--|--|-----|-----|-----|-----|-----|-----|-----|-----|-----|--|
| <p>1. Transfer of cases from one AO to another is governed u/s</p> <p>a) 124 b)125 c)127 d) 129</p> | <p>a) 117 b) 118 c)119 d) 120</p> | | | | | | | | | | |
| <p>2. Assessee can object the jurisdiction of AO within</p> <p>a) 2m b)1m c)3m d)none</p> | <p>7. fresh notice is not required for transfer of cases</p> <p>a) Correct b) Incorrect</p> | | | | | | | | | | |
| <p>3. CBDT can issue order to AO for making a particular Assessment in a particular manner</p> <p>a) True b) False c) none</p> | <p>8. Income tax authority shall itself include CBDT for purpose of Act</p> <p>a) correct b) Incorrect</p> | | | | | | | | | | |
| <p>4. Circular is binding on ____</p> <p>a) Department b) Assessee c) both</p> | <p>9. The succeeding AO shall start case from the stage where</p> <p>a) The earlier officer has leaved</p> <p>b) from starting</p> <p>c) from wherever he wants</p> <p>d) none of the above.</p> | | | | | | | | | | |
| <p>5. If the case is transfered within the same city opportunity of being heard is not required.</p> <p>a) True b) false</p> | <p>Answers:</p> <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse;"> <tr> <td style="padding: 5px;">1.c</td> <td style="padding: 5px;">2.b</td> <td style="padding: 5px;">3.b</td> <td style="padding: 5px;">4.a</td> <td style="padding: 5px;">5.a</td> </tr> <tr> <td style="padding: 5px;">6.b</td> <td style="padding: 5px;">7.a</td> <td style="padding: 5px;">8.a</td> <td style="padding: 5px;">9.a</td> <td style="padding: 5px;"></td> </tr> </table> | 1.c | 2.b | 3.b | 4.a | 5.a | 6.b | 7.a | 8.a | 9.a | |
| 1.c | 2.b | 3.b | 4.a | 5.a | | | | | | | |
| 6.b | 7.a | 8.a | 9.a | | | | | | | | |
| <p>6. CBDT can make a authority subordinate to another authority this power is contained in Section.____</p> | | | | | | | | | | | |

2. INCOME TAX AUTHORITIES

Space for Important Points / Notes

Chapter 4 : Assessment Procedures

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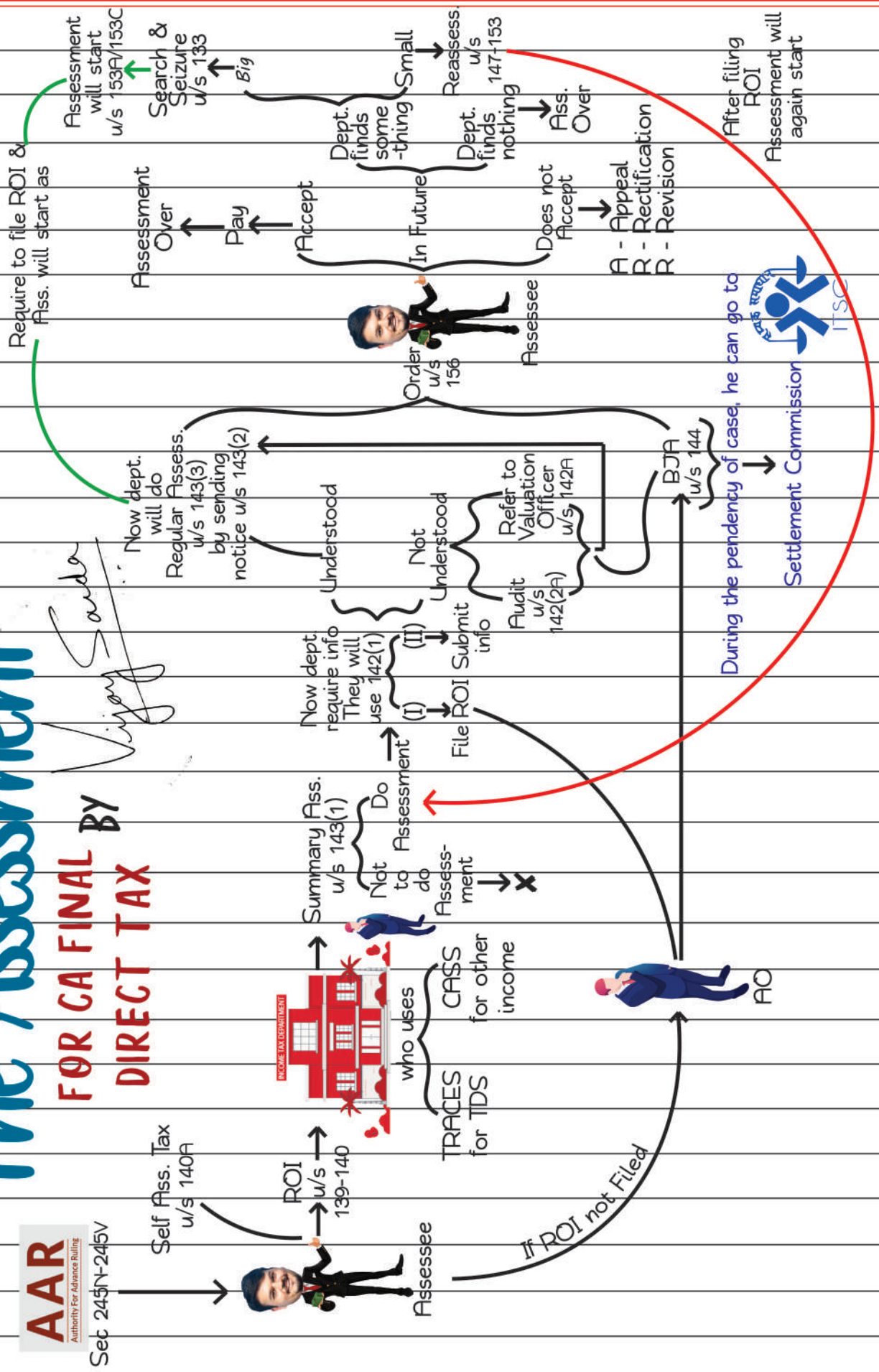
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The Assessment

FOR CA FINAL BY DIRECT TAX

Vijay Sarada



4. ASSESSMENT PROCEDURE

Section List

Assessment Procedure

IMPORTANT

NOT SO
IMPORTANT

OMITTED

142(1) Inquiry before

Assessment

145

145A

} Method of
A/c

146

143(1) Summary Ass.

143(2) Notice before Ass.

143(3) Regular Ass.

143(3A) E-Assessment

142(2A) Special Audit

142A Valuation by VO

147-152 Reassessment

153 Time Limit to

complete Ass.

Golden Rule in Assessment procedure

Non Est - If law require a particular thing to be done in a particular manner, then it shall be done in that manner. If it is not done so, then action will be void-ab-initio

Fetters - When the law gives the power to any authority, the power is always subject to limitations.

Discretion - If the law gives a discretion, then it shall be judiciously exercised.

Principle of Natural Justice - Before taking any action against a person, opportunity of being heard shall be provided.

Sec 2(7A) Assessing Officer (AO)

1. JDIT/JCIT/ Addl DIT/ Addl CIT, only if authorised by CBDT
2. DDIT/ DCIT/ ADIT/ ACIT
3. ITO

Sec 2(8) Assessment

Assessment is the procedure by which income of an assessee is determined by Assessing Officer

Sec.2(23C) Hearing

Hearing includes Communication of data & documents through electronic mode

Sec.2(40) Regular Assessment

Regular Ass. means Assessment u/s 143(3) or 144

4. ASSESSMENT PROCEDURE

Sec.140A Self Assessment Tax

Where any tax & interest u/s 234A, 234B & 234C & fee u/s 234F is payable by the assessee on the basis of the return of income required to be furnished u/s 139 or sec 142(1) / sec 148, or sec 153A , after deducting

- i) Advance Tax;
- ii) any tax deducted or collected at source;
- iiia) any relief of tax claimed u/s 89;
- iii) any relief of tax claimed u/s 90 / 91 of tax paid in country o/s India;
- iv) any relief of tax claimed u/s 90A on account of tax paid in any specified territory outside India referred to in that section;
- v) any MAT credit u/s 115JAA or AMT credit u/s 115JD; and
- vi) any tax or interest payable according to the provisions of sec 191(2) [FA'20]

SIMPLIFIED ANALYSIS :

- The Assessee is required to assess his own Income and Tax payable thereon after taking into account

Total Income	xxx	<p style="color: green; font-size: small;">The assessee shall be liable to pay such tax with interest & Fees. Where the amount paid by the assessee falls short of the aggregate of the tax the amount so paid shall first be adjusted towards the Fees & thereafter interest payable as aforesaid & the balance, if any, shall be adjusted towards the tax payable.</p>
Compute tax on total income After surcharge & HEC	xxx	
Less: TDS/TCS//Advance tax relief 89/90/91/115JAA/115JD	[xxx]	
Add: Interest u/s 234A/B/234F Tax & Interest u/s 191(2)	xxx	
Final Advance Tax payable	xxx	

Notes :

- Consequences of Failure to Pay Tax Interest or Fees**

A) Assessee shall deemed to be Assessee in Default & interest is payable u/s 220/221.

B) Recovery Proceeding shall be Initiated. However, ROI shall not be treated as defective, if SA is not paid

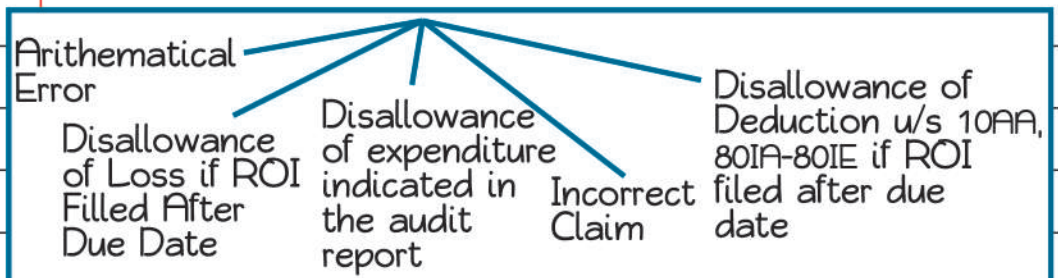
C) Penalty u/s 221 can also be levied -Maximum penalty = Tax in arrears.

4. ASSESSMENT PROCEDURE

2. After a regular assessment any amount of Advance tax shall deemed to be paid towards regular Assessment

Sec.143[1] Summary Assessment [By System CASS]

- 1) Where a return has been made u/s 139, or in response to a notice u/s 142(1), such return shall be processed in the following manner, namely
- a) the total income / loss shall be computed after following adjustments,



Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing / electronic mode.

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made.

- b) the tax, interest and fee, if any, shall be computed on the basis of the total income computed under clause (a);
- c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax, interest and fee, if any, computed under clause (b)



4. ASSESSMENT PROCEDURE

by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable u/s 89, any relief allowable under an agreement u/s 90 / 90A, or any relief allowable u/s 91, any rebate allowable under Part A of Chap VIII, any tax paid on self-assessment & any amount paid otherwise by way of tax, interest or fee;

d) an intimation shall be prepared / generated & sent to assessee specifying the sum determined to be payable by, amount of refund due to, assessee under clause (c); and

e) the amount of refund due to the assessee in pursuance of determination under clause (c) shall be granted to the assessee

Notes :

- | | | | |
|---|--|---|--|
| <p>1. Incorrect Claim Means a claim on the Basis of an Entry in ROI</p> <ul style="list-style-type: none"> a) Item which is inconsistent with another entry b) Information is required to be furnished, has not been furnished c) a deduction exceeds specified statutory limit <p>2. Upon Summary Assessment</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>Adjustment Made</p> <ul style="list-style-type: none"> 1. Tax Payable or refund or 3. Adjustment made but no Liability arose <p>Intimation is Issued.</p> </td> <td style="width: 50%; vertical-align: top;"> <p>No Adjustment Made</p> <ul style="list-style-type: none"> No Intimation is Generated Acknowledgement is deemed to be Assessment </td> </tr> </table> <p>3. If ROI is not Filled then summary Assessment is not Possible</p> <p>4. Summary Assessment is Mandatory</p> <p>5. Time Limit: 1 year from end of FY in which ROI is filed</p> | <p>Adjustment Made</p> <ul style="list-style-type: none"> 1. Tax Payable or refund or 3. Adjustment made but no Liability arose <p>Intimation is Issued.</p> | <p>No Adjustment Made</p> <ul style="list-style-type: none"> No Intimation is Generated Acknowledgement is deemed to be Assessment | <p>6. Summary Assessment</p> <ul style="list-style-type: none"> a) Original ROI - ✓ b) Belated ROI - ✓ c) Revised ROI - ✓ d) Return in response to notice. - ✓ e) Re Assessment - ✓ f) ROI filled after Search u/s 153A/C - ✓ <p>7. Remedies Against Summary Assessment</p> <ul style="list-style-type: none"> Appeal - ✓ rectification - ✓ Revision - ✗ <p>8. Assessee can submit revised return after Intimation Rajesh Jhaveri [2006]</p> |
| <p>Adjustment Made</p> <ul style="list-style-type: none"> 1. Tax Payable or refund or 3. Adjustment made but no Liability arose <p>Intimation is Issued.</p> | <p>No Adjustment Made</p> <ul style="list-style-type: none"> No Intimation is Generated Acknowledgement is deemed to be Assessment | | |



4. ASSESSMENT PROCEDURE

Sec.241A Withholding of refund in certain cases

Where refund of any amount becomes due to the assessee under the provisions of 143(1) & AO is of the opinion, having regard to the fact that a notice has been issued u/s 143(2) in respect of such return, that the grant of the refund is likely to adversely affect the revenue, he may, for reasons to be recorded in writing & with previous approval of PCIT / CIT, as case may be, withhold the refund up to the date on which the assessment is made.

From 01st Oct'2019, Document Identification Number has come into existence. Every CBDT communication must contain DIN & document without DIN shall be deemed to have never been issued by it,

- 1) Notice
- 2) letter, order, summon or
- 3) other correspondence



Sec.142[1] Inquiry before Assessment

Inquiry before Assessment: for the purpose of making Assessment AO shall require the Assessee

142[1][i] Filling of ROI

AO shall require the Assessee to File ROI in prescribe time & manner

The ROI so filled shall deemed to be filed u/s 139

142[1][ii] Providing the Information.

To produce, or cause to be produced, such accounts or documents as the AO may require, or [Including the statement of Assets & Liability, not for more than 3 years prior to PY]

Previous approval of JC is required if details of all assets & liability are required not included in Account.

- # This notice can be issued without any time limit Notice [But obviously before the completion of time limit of Assessment u/s 153(1)]
- # Assessee shall be given an opportunity of being heard [except in case of Assessment u/s 144 [BJA] in respect of material gathered.
- # Penalty
 - 1) Best judgement u/s 144
 - 2) Penalty u/s 272A(1)(d)- ₹10000 for each default
 - 3) Prosecution u/s 276 upto 1 year
 - 4) Issue order u/s 132 for search and seizure.
- # Normally notice u/s 142(1)(ii) is issues with the notice of assessment u/s 143(2),144,148,153(A). AO can't complete the Assessment without issuing notice u/s 142(1)(ii).
- # Notice u/s 142(l)(ii) can be issued whether the assessee has filed return of income or not.
- # By issuing a notice u/s 142(l)(ii) alone, the AO cannot make an assessment. Normally, the notice u/s 142(l)(ii) is issued after giving the following notices:
 - a) Scrutiny Notice u/s 143(2)
 - b) Show cause notice u/s 144 *
 - c) Notice u/s 148
 - d) Notice u/s 153A

* If reply to the show cause notice issued u/s 144 is unsatisfactory, then the Assessing Officer issues notice under section 142(l)(ii) to gather information for the purposes of making best judgment assessment.

4. ASSESSMENT PROCEDURE

Sec.142[2A] Special Audit

If, at any stage, of the proceedings before him, the AO having regard to

Nature & Complexity of the accounts

Volume of the accounts

Doubts about the correctness of the accounts

Multiplicity of transactions in the accounts

Specialised nature of business activity of Assessee

In the interests of the Revenue

1. AO is of the opinion that it is necessary to do so, he may give Direction for Special Audit with prior approval of CCIT / CIT. at any stage of Proceeding
2. However opportunity of being heard has to be given to the assessee before giving such a direction.
3. Once direction is given
 - a. Assessee should cooperate with the Auditor(CA - nominated by PCCIT/ CCIT/PCIT/CIT for getting the A/c details
 - b. Auditor should submit the report in form 6B
4. Notes:
 - A. AO directs the time limit for completion of Assessment
 - B. 142(2A) can be ordered during Pendency of Assessment /Reassessment not after the completion of Assessment
 - C. The aggregate of period originally fixed + extended shall not, in any case, 180 days .If not submitted within 180 days / delayed then report is Invalid.
 - D. Assessing Officer may, suo motu, or on an application made in this behalf by the assessee and for any good and sufficient reason, extend the said period by such further period as he thinks fit.
 - E. If directions are issued without Show Cause Notice, Assessee can file writ petition in High Court.
5. Remuneration : Determined by CCIT/CIT & paid by CG
6. Audit :
 - Even if earlier audit is completed

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- AO cannot make reference for Special Audit without examining the Books of Account

7. Consequences of non Compliance


- Best Judgement Assessment u/s 144
- Penalty upto - ₹10000 u/s 272A
- Prosecution u/s 276D may extend to 1 year
- Issue order u/s 132 for search and seizure

No appeal can be filed against direction issued u/s 142(2A) or any notice issued by AO under the Income tax Act. The assessee has a constitutional remedy in case he wants to challenge the direction u/s 142(2A) or any other notice of Assessing Officer. The assessee can file a WRIT PETITION in the High Court challenging the validity of the direction u/s 142 (2A) or any other notice issued by AO. Thereafter the assessee can file a Special Leave Petition (SLP) to the Supreme Court.

WRIT PETITION & SLP can be filed only if there is no remedy in law.

Sec.142A Estimation by Valuation Officer



1. AO may, for the purposes of assessment or reassessment, make a reference to a Valuation Officer to estimate value, including FMV, of any asset, property / investment & submit copy of report to him.
2. The Assessing Officer may make a reference to the Valuation Officer whether or not he is satisfied about the correctness or completeness of the accounts of the assessee.
3. Assessment shall be Pending
4. Valuation officer shall estimate the value of  Assets
Investment
Property
5. The Valuation Officer may estimate the value of the asset, property or investment to the best of his judgment, if the assessee does not co-operate or comply with his directions.

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6. The Valuation Officer shall send a copy of the report of the estimate made to the AO and the assessee, within a period of 6 months from the end of the month in which a reference is made.
7. The Assessing Officer may, on receipt of the report from the Valuation Officer, and after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.

Sec 143(2) Notice for Making Scrutiny Assessment

Where a return has been furnished u/s 139, or in response to a notice u/s 142(1), the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return.

Provided that no notice under this sec shall be served on the assessee after the expiry of 6m from the end of the FY in which the return is furnished.

SIMPLIFIED ANALYSIS :

- 1) Where ROI is filled u/s 139 or 142[1] the AO or Prescribe Income Tax Authority [but not below ITO} who has been authorized by CBDT shall serve a notice.
- 2) Notice shall be served within 6m from end of FY in which the return is made.
- 3) Notice is Mandatory, if notice is not served/timely served Scrutiny is illegal.
- 4) Notice is required to be served (received by Assessee), not just issued.
- 5) If Assessee filed revised return after serving of Notice then fresh notice shall be served
- 6) Notice shall require the Assessee to appear before AO on specified date &

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bring such documents as may be specified.

7) Notice u/s 143(2) can be issued even if intimation u/s 143(1) is issued.

8) Notice u/s 142(1) & 143(2) can be issued simultaneously.

9) Non Compliance - a. Best Judgement Assessment u/s 144

b. Penalty u/s 272A(1) - ₹ 10,000/-

Sec 143(3) Regular/ Scrutiny Assessment

On the day specified in the notice issued u/s 143(2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as AO may require on specified points, and after taking into account all relevant material which he has gathered, the AO shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

Provided that in the case of a -

a. research association u/s 10(21)

b. news agency u/s 10(22B)

c. association or institution u/s 10(23A)

d. institution u/s 10(23B)

e. fund, institution, trust, university/other educational institution/hospital or other medical institution u/s 10(23C)(iv),(v),(vi)(via)

which is required to furnish the ROI u/s 139(4C) , no order making an assessment of the total income or loss of such research association, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical institution, shall be made by AO, without giving effect to sec 10, unless-

i) the AO has intimated the Central Government or the prescribed authority the contravention of clause (21) / (22B) / (23A) / (23B) / (23C)(iv) / (23C)(v) / (23C)(vi) / (23C)(via) section 10, as the case may be, by such research association, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical

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institution, where in his view such contravention has taken place; and

- ii) the approval granted to such research association or other association or fund or trust or institution or university or other educational institution or hospital or other medical institution has been withdrawn or notification issued in respect of such news agency / fund or trust or institution has been rescinded

SIMPLIFIED ANALYSIS

The A.O. shall if he considers it necessary, take up the case for regular assessment by issuing a notice (Sec.143(2)), requiring the assessee to attend his office or produce any evidence on which the assessee may rely in support of return, to ensure that the assessee:

1. has not understated Income;
2. has not overstated the loss
3. has not underpaid the tax.

Assessment is possible only if returned is filled if return is not filled no Scrutiny assessment can be made.

3rd proviso : If gross receipt of the trust covered u/s 10(23C) is more than 20% of total receipt, AO shall not grant exemption

Additional Power of AO u/s 143[3]

1. The AO is satisfied that the activities of university/college/institution referred to in section 35(1)(ii)/(iii) are not being carried out in accordance with all or any of the conditions subject to which approval was given to such institution.
2. He may recommend the CG to withdraw the approval given u/s 35.
3. Before recommending the CG the AO will have to give a reasonable opportunity of showing cause against the proposed withdrawal to the university/college, etc.
4. CG may withdraw the approval & forward a copy to concerned institution.
5. No exemption u/s 10(23C) or 11 & 12 by AO for the PY in which Income of trust exceed 20% of total receipt, whether/not approval has been cancelled

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Passing of Order:

1. After making Assessment Ao shall pass order called as Assessment order.
2. The order can be passed within time limit u/s 153(1) i.e. before expiry of 18 months from end of AY in which income was first assessable.
3. The order shall be speaking order

Judicial Updates related to Sec.143(3)

1. **Shelly Products (SC)**: AO can assess the income lower than Return Income.
2. **Goetze (India) Ltd vs CIT (SC)** :

Facts of the Case : For AY 2018-19 the assessee filed its return on Sept 30, 2018 and on Nov 12, 2019 sought to claim a deduction by way of a letter addressed to AO. The AO disallowed it on the ground that there was no provision in the Income-tax Act, 1961 allowing an amendment in the return without a revised return. The Tribunal confirmed this, as did the High Court.

Held : The Supreme Court held that a claim can be made before the AO in the assessment proceedings only through a revised return and not through a letter. Therefore, if a deduction has not been claimed in the return & the assessee wants to claim the said deduction in the assessment proceedings then he can do so, only by filing a revised return. The AO cannot entertain such claim made by the assessee through a letter. The Supreme Court also observed that in this case they were dealing with the power of Assessing Officer and not with the power of ITAT which has the power to entertain a new ground of appeal not raised earlier as held in National Thermal Power Supply Co.

3. Where the return is Invalid the Assessment on such return is also Invalid

Remedies against Regular Assessment

Appeal to CIT[A] - ✓ Rectification u/s 154 - ✓ Revision by CIT - ✓

No order of assessment u/s 143(3) / 144 shall be made after the expiry of 12 months from the end of the relevant Assessment Year [Sec 153(1)]

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Sec 282 Service of Notice

- 1) The service of a notice /summon / requisition / order / any other communication under this Act may be made by delivering or transmitting a copy thereof, to the person therein named
 - a) by post or by such courier services as may be approved by the Board; or
 - b) in such manner as provided under the Code of Civil Procedure, 1908 for the purposes of service of summons; or
 - c) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000; or
 - d) by any other means of transmission of documents as provided by rules made by the Board in this behalf.
- 2) The Board may make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which the communication may be delivered or transmitted to the person therein named.

Sec 282A Authentication of notices & other documents

- 1) Where this Act requires a notice or other document to be issued by any income-tax authority, such notice or other document shall be signed and issued in paper form or communicated in electronic form by that authority in accordance with such procedure as may be prescribed.
- 2) Every notice or other document to be issued, served or given for the purposes of this Act by any income-tax authority, shall be deemed to be authenticated if the name and office of a designated income-tax authority is printed, stamped or otherwise written thereon.
- 3) For the purposes of this section, a designated income-tax authority shall mean any income-tax authority authorised by the Board to issue, serve or give such notice or other document after authentication

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Sec 292B ROI, etc., not to be invalid on certain grounds

No ROI, assessment, notice, summons / other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

Sec 292BB Notice deemed to be valid in certain circumstances

Where an assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was—

- a) not served upon him; or
- b) not served upon him in time; or
- c) served upon him in an improper manner.

Provided that nothing contained in this sec shall apply where assessee has raised such objection before completion of such assessment / reassessment.

Sec 292C Power to withdraw approval

Where the CG or the Board or an income-tax authority, who has been conferred upon the power under any provision of this Act to grant any approval to any assessee, the CG or the Board or such authority may, notwithstanding that a provision to withdraw such approval has not been specifically provided for in such provision, withdraw such approval at any time

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Provided that the CG or Board or income-tax authority shall, after giving a reasonable opportunity of showing cause against the proposed withdrawal to the assessee concerned, at any time, withdraw the approval after recording the reasons for doing so.

Sec 285 Statement by non-resident having liaison office

Every person, being a non-resident having a liaison office in India set up in accordance with the guidelines issued by the Reserve Bank of India under the Foreign Exchange Management Act, 1999, shall, in respect of its activities in a financial year, prepare and deliver or cause to be delivered to the Assessing Officer having jurisdiction, within sixty days from the end of such financial year, a statement in such form and containing such particulars as may be prescribed.

Sec 288 Appearance by authorised representative [Only relevant portion]

- 1) Any assessee who is entitled or required to attend before any income-tax authority or the Appellate Tribunal in connection with any proceeding under this Act otherwise than when required u/s 131 to attend personally for examination on oath or affirmation, may, subject to the other provisions of this section, attend by an authorised representative.
- 2) For the purposes of this section, "authorised representative" means a person authorised by the assessee in writing to appear on his behalf, being -
 - i) a person related to the assessee in any manner, or a person regularly employed by the assessee; or
 - ii) any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings; or
 - iii) any legal practitioner entitled to practise in any civil court in India; or
 - iv) an accountant; or
 - v) any person who has passed any accountancy examination recognised in

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this behalf by the Board; or

vi) any person who has acquired such educational qualifications as the Board may prescribe for this purpose; or

vii) any person who, before the coming into force of this Act in the Union territory of Dadra & Nagar Haveli, Goa, Daman and Diu / Pondicherry, attended before an income-tax authority in the said territory on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee; or

viii) any other person who, immediately before the commencement of this Act, was an income-tax practitioner u/s 61(2)(iv) of the Indian Income-tax Act, 1922, & was actually practising as such.

(viii) any other person as may be prescribed. [FA'20] [Amendment because of IBC Act]

Sec 143(3A) E - Assessment

The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of making assessment of total income / loss of assessee u/s 143(3) / 144 [FA'20] [Amendment to improve effectiveness of tax administration] to impart greater efficiency, transparency & accountability by

a) eliminating the interface between AO & the assessee in the course of proceedings to the extent technologically feasible;

b) optimising utilisation of the resources through economies of scale & functional specialisation;

c) introducing a team-based assessment with dynamic jurisdiction.

[3B] The CG may, for the purpose of giving effect to the scheme made u/s 143(3A) by notification in the Official Gazette, direct that any of the provisions of this Act relating to assessment of total income or loss shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.

4. ASSESSMENT PROCEDURE

Provided that no direction shall be issued after 31st of March, 2022[FA'20]

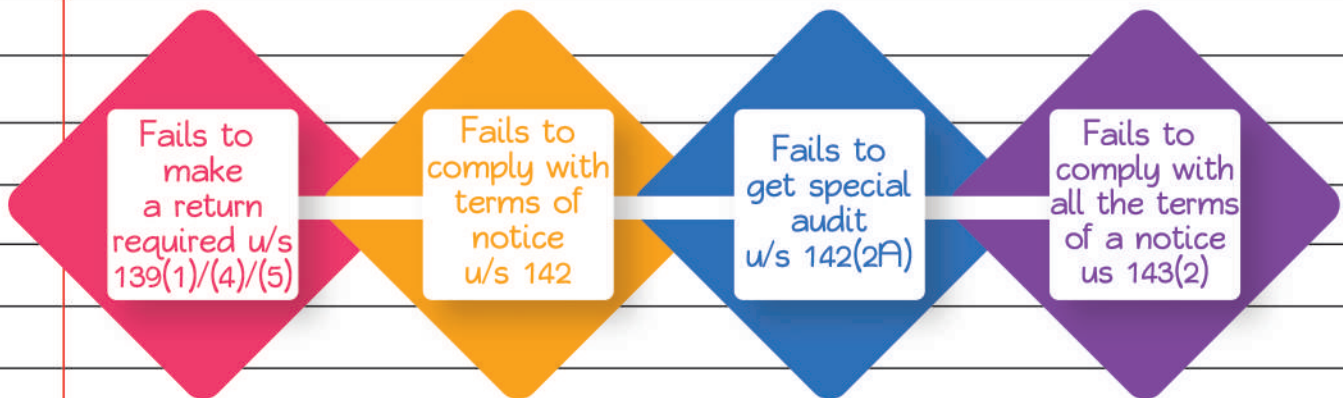
[3C] Every Notification u/s 143(3A) & 143(3B) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

CIRCULAR NO 27/2019 dt 26.09.2019

- a) In all cases (other than covered under E Assessment scheme, 2019 notified by Board), where the assessment is to be framed u/s 143(3) during FY 19-20, such assessment shall be conducted electronically
- b) Assessee are required to produce/cause to produce their response/evidence to any notice/communication/show cause, unless specified otherwise through E Filing Account on E Filing portal
- c) For Assessment during FY 19-20, E Proceeding shall not be mandatory :
 - 1) Where assessment is to be framed u/s(s) 153A, 153C and 144 of the Act. In respect of assessments to be framed u/s 147 of Act, any relaxation from e-proceeding due to the difficulties in migration of data from ITO to ITBA etc. shall be dealt as per clause (f) below;
 - 2) In set-aside assessments;
 - 3) Assessments being framed in non-PAN cases;
 - 4) Cases where Income-tax return was filed in paper mode & the assessee concerned does not yet have an 'E-filing' a/c;
 - 5) In all cases at stations connected through the VSAT or with limited capacity of bandwidth (list of such stations shall be specified by the Pr. DGIT (System));
 - 6) In cases covered under para 1 (i) above, the jurisdictional PCIT/CIT, in extraordinary circumstances such as complexities of the case / administrative difficulties in conduct of assessment through 'E-Proceeding', can permit conduct of assessment proceedings through the conventional mode. It is hereby further directed that PCIT/CIT is required to provide such relaxation only in extraordinary circumstances after examining the necessity for such relaxation & recording reasons for providing relaxations.
- d) In cases where assessment proceedings are being carried out through the 'E-Proceeding' as per para 1 (i) above, personal hearing/ attendance may take place in following situation(s):
 - 1) Where books of accounts have to be examined;
 - 2) Where AO invokes provisions of section 131 of the Act;
 - 3) Where examination of witness is required to be made by assessee/Dept;
 - 4) Where a show-cause notice contemplating any adverse view is issued by AO & assessee requests through 'E-filing' account for personal hearing to explain matter.
 - 5) However, the details pertaining to above shall be uploaded on ITBA subsequently

For Computing PGBP/OS method of accounting is relevant. CG shall notify ICDS (10 notified to be followed by all assessee - other than an individual or HUF who is not required to get his accounts of the previous year audited in accordance with the provisions of section 44AB following the mercantile system of accounting.)

Sec.144 Best Judgement Assessment



Mandatory BJA

1. Fails to make a return required U/s.139(1)/(4)/(5) ,or
- 2.Fails to comply with terms of notice issued U/s.142, or
- 3.Fails to get special audit u/s.142(2A)
- 4.Fails to comply with all the terms of notice U/s.143(2)

Optional Mandatory BJA

1. Accounts are incorrect or
2. Accounts are incomplete or
- 3.where no method of accounting has been regularly employed by the assessee or ICDS is followed [Optional BJA] Sec.145[3]

The A.O. after taking into account all material which he can gather is empowered to make the assessment of total income or loss to the best of his judgment & determine the sum payable on the basis of such assessment.

- Opportunity of being heard shall not be given for making BJA in case notice u/s 142(1)(i) has been issued to the assessee.
- AO cannot make BJA on ad-hoc-basis he must have evidence.
- No order of assessment shall be made after the expiry of 12 months from the end of the relevant Assessment Year
- No refund can be Issued by AO under this Section.

4. ASSESSMENT PROCEDURE

Sec.144A power of JC to Issue Directions

- The J.C. may on his own motion or on a reference by the A.O. or on an application by the assessee, call for & examine records of any proceeding in which an assessment is pending.
- He may issue directions to A.O. to enable him to complete assessment & such directions shall be binding on the A.O
- Such Direction are binding on AO not Binding on Assessee.
- OOBH Must be given.
- No appeal can be filed against the direction u/s 144A.
- The Directions u/s 144A can be in favour of assessee or can be against the assessee.
- No appeal can be filed against the Directions issued u/s 144A. If the Directions issued u/s 144A are prejudicial to the assessee then AC/ DC/ ITO will disallow the deduction or tax the receipt, in accordance with Directions of Joint Commissioner u/s 144A. The assessee can file an appeal to CIT (Appeal) against the assessment order of DC/ AC/ ITO.

Sec.145 Method of Accounting

- > For income under PGPB and IOS the computation shall be as per cash or accrual system of accounting.
- > The assessee is required to follow income computation and disclosure standards as may be notified by the Central Government.
- > If the accounts of the assessee are correct and complete, but the method of accounting is such (in the opinion of the AO) the correct profits cannot be derived there from then the AO may make the assessment u/s 144

British Paints India Ltd v CIT (SC)

Sec.145B Taxability of certain income

- > Interest received by assessee on any compensation/enhanced compensation, shall be deemed to be income of PY in which it is received (Refer IFOS).

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- > Any claim for escalation of price in a contract/export incentives shall be deemed to be the income of PY in which reasonable certainty of its realisation is achieved.
- > Assistance in the form of subsidy/grant/cash incentive/duty drawback/waiver/concession be deemed to be the income of the PY in which it is received (refer PGBP)

Sec.147 Income Escaping Assessment

If the A.O. has **reason to believe** that **any income chargeable to tax** has escaped assessment for any AY he may Subject to provision u/s 148 to 153

Assess or reassess such income

Also any other income chargeable to tax which has escaped assessment & Which comes to his notice subsequently in the course of proceedings under this section,

Recomputed the loss or the depreciation allowance/any other allowance, as the case may be, for the AY.

Condition of Assessment:

- 1- AO should have reason to Believe.[Like document/statement/third party confirmation]
- 2- Reason to believe shall be of AO, AO cannot borrow the opinion of other
- 3- **Assessment/ Reassessment cannot be possible of an exempt Income.**
- 4- **AO cannot Assess / Reassess the Income which is subject matter of Appeal/ Revision.[Doctrine of Partial Merger]**

- > Where an assessment u/s 143(3) or 147 has been made, no action shall be taken u/s 147 beyond 4 years from the end of the relevant AY. If both conditions are satisfied: 1) Assessee has filed ROI
2) Assessee disclose truly / fairly all information necessary for Assessment.

4. ASSESSMENT PROCEDURE

Notes :

- > Concept of Partial merger has been affirmed u/s 147 i.e. he can assess/ reassess the issue u/s 147 which has not gone to appeal or revision
- > ~~Where the income/assets are located outside India & they are not reported u/s 92E then it would be deemed as Income has escaped the assessment.~~

MEANING OF INCOME ESCAPED- Explanation 2

- ✓ **No return of income filed**, though income exceeds the basic exemption limit.
- ✓ **Return is furnished but no assessment has been made** & the A.O. notices that the assessee has understated the income or claimed excessive loss, deductions etc.
- ✓ **Where an assessment has been made** but -
 - # The income chargeable has been under-assessed; or
 - # such income is assessed at too low rate; or
 - # excessive relief was given
 - # excessive loss, depreciation or other allowances has been computed.
- ✓ Where an assessee has **failed to furnish a report** in respect of any international transaction u/s 92E.
- ✓ Where **a person is found to have any asset** (including any financial interest in any entity) **located outside India**.
- ✓ Information / Document u/s 133C

Return if Filled	# It is noticed by AO in such Information that assessee has Understated Income or # Claimed Excess Loss/Deduction/Allowance/relief in the return
Return Not filled	Such Information provides that total income exceed BEL

All the above amendments shall apply to proceedings for earlier years also.

Reason to Believe :- In the following cases Assessee shall deemed to have reason to believe.

1. Later of SC/HC Judgement

4. ASSESSMENT PROCEDURE

2. Retrospective amendment in Law
3. Fresh evidence in possession of AO

No reason to believe :-

- ✧ Mere gossip, Rumor, or suspicion is not a sufficient cause
- ✧ AO cannot make assessment to make roving and fishing inquiries
- ✧ Change in opinion of AO [CIT vs Kelvinator India 2010(SC)]
- ✧ On the date of issue of notice there were no amendment subsequently retrospective amendment was brought it will not be a reason for Assessment [Godject Industries Ltd Vs. B.S. Singh]
- ✧ AO completed assessment u/s 143(3) holding that loss was non speculative after 4 years Ao reopened the assessment recording the reason that a mere relook at accounts, it is noticed that loss in trading is speculative, which cannot be setoff with non speculative Income . It was held that reopening cannot be done as there was no failure on the part of assessee to disclose the true and fair Information.[ACIT vs. ICICI securities primary dealership 2012 SC]
- ✧ Report of DVO is merely as estimation it cannot be reason to believe [ACIT vs. Dhariya construction 2011 SC]
- ✧ Change in Incumbent of office & new officer applied new theory this shall amount to Change in opinion this cannot be reason for 147 [H.K.Buildcon]
- ✧ Reopening cannot be done on the basis of Audit objection.
- ✧ Assessee filled return which was processed u/s 143(1) later on survey was conducted based on survey report AO opened Assessment u/s 147 held that survey report cannot be the Basis for 147.[Hemant Trader vs ITO 2015]
- ✧ No of time Reassessment can be done: if condition of Sec.147 is satisfied it can be done for any number of Time.

Procedure of Assessment [GKN Driveshaft SC]

- S.1 AO shall have reason to believe S.3: Issue of Notice u/s 148
- S.2 Approval of Higher authorities u/s 151

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MEANING OF INCOME ESCAPED- Explanation 3

For the purpose of assessment / reassessment under this section, AO 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, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-sec (2) of section 148.

Notice u/s 148

- The A.O. before making an assessment or re-assessment or re-computation U/s.147 shall serve on the assessee a notice U/s.148
- The A.O. shall record his reasons for doing.
- If notice is not served properly assessment is illegal and Void
- The ROI is required to be furnished within time prescribed in notice by A.O. After expiry of 4 years from end of relevant AY the notice u/s 148 cannot be issued unless
 - A) assessee has not filed a return u/s 139 / 142/ 148
 - B) Assessee has failed to fully and truly disclose all material facts at the time of assessment.

However this proviso shall not apply if any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any A.Y

For a return filed in response to notice u/s 148, the notice u/s 143(2) must be served within 6months from the end of FY in which ROI was filed, otherwise, Ass./Reass. u/s 147 shall be void.

The objective of this sec. is to increase the revenue collection.

Hence the tax liability of an assessee cannot be reduced further in proceedings under this Sec.

CBDT Circular: [Note Ban] : Reopening of case u/s 147 is feasible only when the AO has reason to believe that any income chargeable to Tax

4. ASSESSMENT PROCEDURE

has escaped Assessment & not merely on the basis of any reason to suspect merely increase of turnover because of use of digital mode of payment in a particular year cannot be reason to believe that income has escaped Assessment.

Sec.147	Sec.148	Sec.149	Sec.151
.Assessment .Re-assessment .Re-Computation	Notice to be issued	Time Limit for issue of notice.	Sanction required for issuing notice.

Sec 149 Time Limits for Issue of Notice u/s 148

No notice u/s 148 shall be issued for the relevant Assessment Year

If four years have lapsed from the end of the relevant AY, unless the case falls under Clause (b) or Clause (c);

If four years, but not more than 6 years, have lapsed from the end of the relevant AY unless the income chargeable to tax which has escaped assessment amounts to / is likely to amount to ₹1,00,000 or more for that year.

If four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

Section 149(2) provides that the provisions of section 149(1) as to issue of notice shall be subject to the provisions of section 151.

Sec 150 No Time Limit for issue of Notice

Notwithstanding anything contained in section 149, a notice u/s 148 may be issued at any time for the purposes of making an assessment or reassessment in consequence of or in order to give effect to the finding or direction contained in an order u/s 250, 254, 260A, 262, 263 or 264 of the Income tax Act / the **ORDER OF A COURT UNDER ANY OTHER LAW.**

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Sec 151 Sanctions for Issue of Notice u/s 148

Notice can be issued upto 4 years from the end of the relevant Assessment Year	Notice can be issued after 4 years but upto 6 years/ 16 years from the end of the relevant Assessment Year
By Joint Commissioner. However, the Assistant Commissioner/ Deputy Commissioner/ Income Tax Officer can issue the notice if Joint Commissioner is satisfied on reasons recorded by AO that it is a fit case for issue of such notice.	By any Assessing Officer if Chief Commissioner of Income-tax / Commissioner of Income-tax is satisfied on reasons recorded by Assessing Officer that it is a fit case for issue of such notice.

R.K. UPADHYAYA VS. SHENEBHAI P.PATEL (SUPREME COURT)

There is a clear distinction between the words "issue" & "serve". Sec 149(1) lays down the time limits for issue of notice. Therefore, if a notice is issued within the time limit prescribed u/s 149(1) but is served after that date, it will be a valid notice.

EXCEPTIONS TO THE TIME LIMITS GIVEN IN SECTION 149(1)

> 1st Proviso to Sec 147

Where an assessment has been made earlier u/s 143(3) or u/s 147, then the notice u/s 148 shall not be issued after the expiry of 4 years from the end of the relevant AY if both the following conditions are satisfied :

- i) Assessee has filed ROI which he was required to furnish under any provision of Income Tax Act, AND
- ii) Assessee has disclosed fully and truly all material facts necessary, for assessment.

(This is possible only when income has escaped assessment because of mistake of Assessing Officer)

> 2nd Proviso to Sec 147

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial

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interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year.

Sec 152 Other Provisions

In an assessment or reassessment made u/s 147, the tax shall be chargeable at the rates at which it would have been charged had the income not escaped assessment.

SUN ENGINEERING PRIVATE LIMITED (SUPREME COURT)

The assessee filed a ROI for AY 2012-13 declaring income of ₹20 lakhs. The AO u/s 143(3) made on 31.12.2014 disallowed expense A of ₹15 lakhs, although Supreme Court has held in some other case that expense A is allowable. The AO assessed the income at ₹35 lakhs u/s 143(3). The assessee did not file any appeal to CIT (Appeals) / revision application u/s 264/ rectification application u/s 154 and the time for filing appeal/ revision / rectification have all expired. AO finds income escaping assessment of ₹25 lakhs for AY ,2012-13 on 31.1.2019 & issues a notice u/s 148 to assess the escaped income of ₹25 lakh. Assessee files Return u/s 148 as under

Original assessed income	35 lakhs
Add: Escaped income	25 lakhs
Less: Expense wrongly disallowed u/s 143(3)	15 lakhs
	45 lakhs

HELD

- Since the assessee has not appealed against the original order of AO passes u/s 143(3), it has become final. On re-assessment u/s 147, original assessment is not wiped off & original order does not cease & it remains.
- The assessee cannot seek the reopening of the entire assessment and cannot claim credit in respect of items finally concluded in the original assessment. The assessee cannot claim re-computing of the income or redoing of an assessment and cannot be allowed a claim which he either

4. ASSESSMENT PROCEDURE

failed to make or which was otherwise rejected at the time of original assessment, which has since acquired finality.

- c) The assessee cannot re-agitate in the reassessment proceedings, the matter which he had lost during the original assessment proceedings. The reassessment does not wipe off the original assessment.
- d) A matter not agitated in the concluded original assessment proceedings cannot be permitted to be agitated in the reassessment proceedings unless it relates to the item sought to be taxed as escaped income. In the reassessment proceedings for bringing to tax items which had escaped assessment, it would be open to the assessee to put forward claims for deduction of any expenditure in respect of that income or the non-taxability of the said income. The reassessment proceedings are for the benefit of the revenue and not for the benefit of the assessee and an assessee cannot be permitted to convert the reassessment proceedings into appeal or revision and seek relief in respect of items rejected earlier or in respect of items not claimed in the assessment proceedings.
- e) Re-assessment cannot result in reduction of income beyond the income originally assessed. In the present case, the assessee cannot be allowed Expense A of ₹15 lakhs since the issue of expense A has acquired finality

Principles derived from Sun Engineering Case :

- 1) On reassessment u/s 147, the original assessment is not wiped off but it remains.
- 2) Matters lost in the original assessment proceedings which have since acquired finality (i.e. against which no appeal/rectification application /revision application filed) cannot be claimed in the reassessment proceedings. Therefore, expenses disallowed/ incomes taxed in the original assessment against which no appeal/revision/rectification application was filed cannot be claimed as allowable/ non-taxable in the reassessment proceeding u/s 147

4. ASSESSMENT PROCEDURE

- 3) Expenses not claimed in the original assessment cannot be claimed in the reassessment proceedings u/s 147. However, the expenses pertaining to the income which has escaped assessment can be claimed. The assessee can prove that the income which is alleged to have escaped assessment is not taxable.
- 4) U/s 147 the income cannot be reduced below the income originally assessed. Similarly, u/s 147 the losses cannot be assessed above the losses originally assessed.
- 5) Section 147 is for the benefit of revenue and not for the benefit of the assessee. Therefore, if no return was filed earlier and no assessment was made earlier, then u/s 147, the Assessing Officer cannot compute the loss of the assessee.

Sec 156 Notice of Demand

- 1) When any tax interest, penalty, fine, or any other sum is payable in consequence of any order passed, the A.O. shall serve upon the assessee, a notice of demand in the prescribed form specifying the sum so payable.
- 2) Where the income of the assessee of any assessment year, includes income of the nature specified in Sec 17(2)(vi) & such specified security or sweat equity shares referred to in the said clause are allotted or transferred directly or indirectly by current employer, being an eligible start-up referred to in sec 80-IAC, the tax / interest on such income included in notice of demand referred to in sub-sec (1) shall be payable by assessee within 14 days -
 - (i) after the expiry of 48 months from the end of the relevant AY; or
 - (ii) from the date of the sale of such specified security or sweat equity share by the assessee; or
 - (iii) from the date of the assessee ceasing to be the employee of the employer who allotted or transferred him such specified security or sweat equity share,whichever is earliest. [FA'20]

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Sec.157 Intimation of Loss

In the course of the assessment of the total income ,if it is established that a loss has taken place which the assessee is entitled to c/f, the A.O. shall notify the assessee by an order in writing ,the amount of such loss.

Sec.158A Procedure When Assessee Claims Identical Question Of Law Is Pending Before High Court Or Supreme Court

- 1) Appellate Authority: means the CIT (Appeals) or the ITAT.
- 2) Where an assessee claims that any question of law arising in his case for an AY which is pending before the AO or any appellate authority is identical with a question of law arising in his case for another AY which is pending before the High Court in an appeal u/s 260A or Supreme Court in an appeal u/s 261, then he may furnish a declaration to the AO or the appellate authority, as the case may be.
- 3) The declaration shall be in the prescribed form and shall be to the effect that if the AO or the appellate authority, as the case may be, agrees to apply in the relevant case, the final decision on question of law in the other case, then he shall not raise such question of law in the relevant case in any appeal.
- 4) Where the declaration is furnished to the appellate authority, the appellate authority shall call for a report from AO on the correctness of the claim of the assessee
- 5) The AO / appellate authority, as the case may be, by an order in writing
 - i) admit the claim of assessee if he or it is satisfied that the question of law arising in relevant case is identical with question of law in other case or
 - ii) reject the claim of the assessee if not so satisfied

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- 6) Where the claim of the assessee is admitted
- a) the Assessing Officer or the Appellate Authority, as the case may be, may make an order disposing of the relevant case without awaiting for the final decision on question of law in the other case; and
- b) the assessee shall not be entitled to raise, in relation to the relevant case, such question of law in any appeal before any appellate authority or in appeal before the High Court u/s 260A or the Supreme Court u/s 261.
- 7) When the decision on the question of law in the other case becomes final, it shall be applied to the relevant case and the AO or the Appellate Authority shall, if necessary, amend the earlier order in the relevant case in conformity with such decision.

Sec 158AA Procedure When in an Appeal by Revenue an Identical Question of Law is Pending Before Supreme Court

- 1) Notwithstanding anything contained in this Act
- where the Commissioner is of the opinion that any question of law arising in the case of an assessee for any AY (such case being herein referred to as relevant case)
 - is identical
 - with a question of law arising in his case for another AY which is pending before the Supreme Court, in an appeal u/s 261 against the order of the High Court in favour of the assessee (such case being herein referred to as the other case),
 - he may, instead of directing the AO to appeal to the Appellate Tribunal
 - direct the AO to make an application to the Appellate Tribunal in the prescribed form within 60 days from date of receipt of the order of CIT (A) stating that an appeal on the question of law arising in the relevant case
 - may be filed when the decision on the question of law becomes final in the other case.

4. ASSESSMENT PROCEDURE

- 2) The Commissioner shall direct the AO to make an application under sub-sec (1) only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case; and in case no such acceptance is received, the Commissioner shall proceed in accordance with the provisions contained in sec 253.
- 3) Where the order of the Commissioner (Appeals) referred to in sub-section (1) is not in conformity with the final decision on the question of law in the other case, the Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal against such order.
- 4) Every appeal under sub-section (3) shall be filed within 60 days from the date on which the order of the Supreme Court in the other case is communicated to the Commissioner.

Notes :

- i) The above application can be filed only if assessee gives the acceptance that Question of Law in relevant case is identical with Question of Law in other case which is pending before Supreme Court.
- ii) If assessee, does not give acceptance, then Department will file normal appeal to ITAT.
- iii) If above application has been filed after getting acceptance from assessee, and later on the Supreme Court.

CASE I Decides in favour of assessee in other case, then the matter ends.

No appeal by Department to ITAT in the relevant case

CASE II Decides against the assessee in other case. The CIT will direct the Assessing Officer to file appeal to ITAT in relevant case against the order of CIT(A) and such appeal shall be filed within 60 days from the date the order of Supreme Court is communicated to the CIT

Sec 281 Certain Transfers to Be Void

As a safeguard against non-realisation of revenue due to fraudulent transfers of assets by a defaulting assessee, it is provided under this Section that, certain transfers specified therein are deemed to be void. Accordingly, in cases where, during the pendency of any proceeding under the Income-tax Act or after the completion thereof, any assessee creates a charge on, or parts with, the possession (by way of sale, mortgage, gift, exchange, or any other mode of transfer whatsoever) of any of his assets in favour of any other person, such a charge or transfer will be deemed to be void as against any claim in respect of any tax, penalty, interest or fine payable by the assessee as a result of the completion of the proceedings or otherwise. However, the charge or transfer made by the assessee would not be void in case where it is made.

- a) for adequate consideration and without any notice of the pendency of such proceeding or, as the case may be, without any notice of such tax or other monies remaining payable by the assessee; or
- b) with the previous permission of the Assessing Officer.

This section applies to all cases where the amount of tax or other sum of money which is payable or likely to be payable exceeds ₹5,000 & the assets which are charged or transferred by the assessee exceeds ₹10,000 in value.

For this purpose, the term 'assets' should be taken to mean land, buildings, machinery, plant, shares, securities and fixed deposits in bank to the extent to which any of these assets do not form part of the stock-in-trade of the business carried on by the assessee. In other words, if these items represent the stock-trade of the assessee's business, their transfer would not be treated as void.

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Sec 281B Provisional Attachment to Protect the Interest of The Revenue in Certain Cases

- 1) Where, during the pendency of any proceeding for the assessment of any assessment or reassessment of any income which has escaped assessment, the AO is of the opinion that, for the purpose of protecting the interest of the Revenue, it is necessary to do so, he may, by an order in writing, attach provisionally any property belonging to assessee.
However, before passing an order, the AO is required to take the prior permission of the Chief Commissioner of Income-tax or Commissioner of Income-tax.
- 2) Every provisional attachment would cease to be effective after the expiry of a period of **six months** from the date on which order for the attachment is passed by AO.
Provided that the Chief Commissioner or Commissioner, may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years or sixty days after the date of order of assessment or reassessment, whichever is later.
- 3) Where the assessee furnishes a guarantee from a scheduled bank for an amount not less than the FMV of the property provisionally attached under sub-sec (1), AO shall, by an order in writing, revoke such attachment.
Provided that where the AO is satisfied that a



4. ASSESSMENT PROCEDURE

guarantee from a scheduled bank for an amount lower than the fair market value of the property is sufficient to protect the interests of the revenue, he may accept such guarantee and revoke the attachment.

4) The AO may, for the purposes of determining the value of the property provisionally attached under sub-section (1), make a reference to the Valuation Officer referred to in sec 142A, who shall estimate the fair market value of the property in the manner provided under that section and submit a report of the estimate to the AO within a period of thirty days from the date of receipt of such reference.

5) An order revoking the provisional attachment under sub-section (3) shall be made-

- i) within 45 days from the date of receipt of the guarantee, where a reference to the Valuation Officer has been made under sub-section (4); or
- ii) within 15 days from the date of receipt of guarantee in any other case.

6) Where a notice of demand specifying a sum payable is served upon the assessee and the assessee fails to pay that sum within the time specified in the notice of demand, the AO may invoke the guarantee furnished under sub-section (3), wholly or in part, to recover the amount.



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- 7) The Assessing Officer shall, in the interests of the revenue, invoke the bank guarantee, if the assessee fails to renew the guarantee referred to in sub-section (3), or fails to furnish a new guarantee from a scheduled bank for an equal amount, 15 days before the expiry of the guarantee referred to in sub-section (3).
- 8) The amount realised by invoking the guarantee referred to in sub-section (3) shall be adjusted against the existing demand which is payable by the assessee and the balance amount, if any, shall be deposited in the Personal Deposit Account of the PCIT / CIT in the branch of the Reserve Bank of India or the State Bank of India or of its subsidiaries or any bank as may be appointed by the Reserve Bank of India as its agent under the provisions of sec 45(1) of the Reserve Bank of India Act, 1934 at the place where the office of the PCIT / CIT is situate.
- 9) Where the AO is satisfied that the guarantee referred to in sub-section (3) is not required any more to protect the interests of the revenue, he shall release that guarantee forthwith.

Explanation - For the purposes of this section, the expression "scheduled bank" shall mean a bank included in the Second Schedule to the Reserve Bank of India Act, 1934.



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Sec 153 Time limit for completion of assessment, reassessment & recomputation.

4. ASSESSMENT PROCEDURE

✌️ **Sec 153(1)** - No order of **assessment u/s 143(3) or 144** shall be made **after the expiry of 12 months from the end of the relevant Assessment Year.**

PURSHOTAMDAS T. PATEL

In this case, the Assessing Officer passed assessment order u/s 143(3) on 31.3.2021 for AY 2019-20. The said order was served on the assessee on 2.4.2021. The demand notice u/s 156 was prepared on 5.4.2021 and was served on the assessee on 6.4.2021.

The Court observed that section 153(1) provides that no order of assessment u/s 143(3)/144 shall be made after the expiry of 12 months from the end of the relevant Assessment Year. The Court held that "Assessment" is an integrated process involving not only the determination of total income but also the determination of tax. Therefore, unless the total income is determined and tax thereon is also levied, it cannot be said that the process of assessment is complete. The assessment can be said to be complete when income is determined and tax is levied thereon through a notice of demand under section 156. In the present case, since the notice of demand is prepared on 5.4.2021, the assessment can be said to be completed on 5.4.2021 and is thus time- barred and invalid.

✌️ **Sec 153(2)** - No order of **assessment or reassessment u/s 147** shall be made **after the expiry of 12 months from the end of the FY** in which notice u/s 148 was served on the assessee.

No order of assessment or reassessment u/s 147 shall be made after the expiry of 9 months from the end of the FY in which notice u/s 148 was served on the assessee, where the notice u/s 148 is served upto 31.3.2019.

✌️ **Sec 153(3)** - Notwithstanding anything contained in sub-section (1) & (2), where **an assessment is cancelled or is set- aside by an order u/s 254, 263 or 264** and a direction is given to the AO in such order to make a fresh

4. ASSESSMENT PROCEDURE

assessment, then such fresh assessment shall not be made after the expiry of 12 months from the end of the FY in which order u/s 254 is received by the CIT or order u/s 263 or 264 is passed by the CIT, as the case may be.

Notes :

- i) ~~However, where the order u/s 254 is received by CIT or order u/s 263 /- 264 is passed by CIT upto 31.03.2019 the words "12 months" shall be substituted by words "9 months".~~
- ii) The CIT (Appeals) cannot cancel/ set-aside the assessment and refer it back to the Assessing Officer for fresh assessment.
- iii) If by an order u/s 254, 263 or 264, the assessment is cancelled/ set-aside & a direction is given to make a fresh assessment then, the AO shall make the fresh assessment under the same section under which the original assessment, which is cancelled/ set-aside, was made.
- iv) For making a fresh assessment to give effect to the order u/s 254, 263 or 264, notice u/s 143(2)/ 144/ 148 is not required to be issued again as the previous notice issued for making the original assessment is still valid.

✌ **Sec 153(4)** - Where a reference has been made to the Transfer Pricing Officer u/s 92CA to determine the arm's length price, the time period for completion of assessment/ reassessment shall be increased by 1 year. This is explained below:

	Normal Period of Assessment / Reassessment	Period of Assessment/ Reassessment where a reference has been made to TPO to determine Arm's Length Price
Assessment u/s 143(3) or u/s 144	12 m from the end of the relevant AY	(Reference to TPO made during the course of assessment proceedings u/s 143(3)/ 144) 24 from the end of the relevant AY

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	Normal Period of Assessment / Reassessment	Period of Assessment/ Reassessment where a reference has been made to TPO to determine Arm's Length Price
Assessment or reassessment u/s 147	12 months from the end of the FY in which notice u/s 148 was served.	(Reference to TPO made during the course of assessment or reassessment proceedings u/s 147) 24 m from the end of the FY in which notice u/s 148 was served.
Fresh assessment u/s 143(3) / 144/147 where assessment has been cancelled & referred back to AO for fresh assessment by an order u/s 254, 263 or 264	12 months from the end of the FY in which order under section 254 is received by the CIT or order u/s 263 or 264 was passed by the CIT.	(Reference to TPO made in the proceedings for fresh assessment) 24 months from the end of the FY in which order u/s 254 is received by the CIT or order u/s 263 or 264 was passed by the CIT.

✌ Sec 153(5) - Appeal Effect or Revision Effect

Where effect to an order u/s 250 / 254 / 260A / 262 / 263 / 264 is to be given by the AO, otherwise than by making a fresh assessment or reassessment, such effect shall be given within a period of 3 months from the end of the month in which order u/s 250 / 254 / 260A / 262 is received by the Commissioner, or the order u/s 263 / 264 is passed by the Commissioner.



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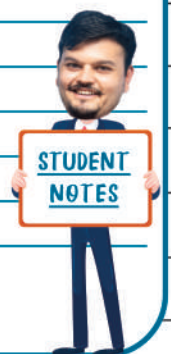
Provided that where it is not possible for the AO to give effect to such order within the aforesaid period, for reasons beyond his control, the Commissioner on receipt of such request in writing from the AO if satisfied, may allow an additional period of 6 months to give effect to the order.

Provided further that where an order u/s 250 / 254 / 260A / 262 / 263 / 264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the order giving effect to the said order u/s 250 / 254 / 260A / 262 / 263 / 264 shall be made within the time specified in sub-section (3).

✌ Sec 153(6) - Time Limit for Completion of Assessment or Reassessment in Certain Cases Pursuant to Directions of Appellate Authorities and Courts

Nothing contained in sub-sections (1) and (2) shall apply to the following classes of assessments, reassessments and recomputation which may, subject to the provisions of sub-sections (3) and (5), be completed—

- 1) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order u/s 250 / 254 / 260 / 262 / 263 / 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act, on or before the expiry of 12 months from the end of the month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be; or



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- 2) where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm u/s 147, on or before the expiry of 12 months from the end of the month in which the assessment order in the case of the firm is passed.

Sec 153 - Explanation 1 -

For the purposes of this section, in computing the period of limitation -

- 1) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the proviso to section 129; or
- 2) the period during which the assessment proceeding is stayed by an order or injunction of any court; or
- 3) the period commencing from the date on which the AO intimates the Central Government or the prescribed authority, the contravention of the provisions of clause (21) / (22B) / (23A) / (23B) / sub-clause (iv) / (v) / (vi) / (via) of clause (23C) of sec 10, under clause (i) of the proviso to sec 143(3) and ending with the date on which the copy of the order withdrawing the approval or rescinding the notification, as the case may be, under those clauses is received by the AO; or
- 4) the period commencing from the date on which the AO directs the assessee to get his accounts audited u/s 142(2A) and -
 - a) ending with last date on which the assessee is required to furnish report of such audit under that sub-sec; or
 - b) where such direction is challenged before a court, ending with the date on which the order setting aside such



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- direction is received by the Principal Commissioner or Commissioner; or
- 5) the period commencing from the date on which the AO makes a reference to the Valuation Officer u/s 142A(1) and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer; or
- 6) the period (not exceeding sixty days) commencing from the date on which the AO received the declaration u/s 158A(1) and ending with the date on which the order under sub-section (3) of that section is made by him; or
- 7) in a case where an application made before the Income-tax Settlement Commission is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which an application is made before the Settlement Commission u/s 245C and ending with the date on which the order u/s 245D(1) is received by the PCIT or CIT u/s 245D(2); or
- 8) the period commencing from the date on which an application is made before the Authority for Advance Rulings u/s 245Q(1) and ending with the date on which the order rejecting the application is received by the PCIT or CIT under sub-section (3) of section 245R; or
- 9) the period commencing from the date on which an application is made before the Authority for Advance Rulings u/s 245Q(1) and ending with the date on which the advance ruling pronounced by it is received by the PCIT \ or Commissioner under sub-section (7) of section 245R; or
- 10) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in sect 90 / 90A and ending with the date on which the information requested is last received by the PCIT or CIT or a period of one year, whichever is less; or
- 11) the period commencing from the date on which a reference for declaration of an arrangement to be an impermissible avoidance arrangement is received by the PCIT or CIT u/s 144BA(1) and ending on the date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the Assessing Officer,

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shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-sections (1), (2), (3) and sub-section (8) available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than 60 days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

Provided further that where the period available to the TPO is extended to 60 days in accordance with the proviso to sub-section (3A) of section 92CA and the period of limitation available to the AO for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

Provided also that where a proceeding before the Settlement Commission abates u/s 245HA, the period of limitation available under this section to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, shall, after the exclusion of the period under sub-section (4) of section 245HA, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year; and for the purposes of determining the period of limitation under sections 149, 154, 155 and 158BE and for the purposes of payment of interest under section 244A, this proviso shall also apply accordingly.

4. ASSESSMENT PROCEDURE

Relevant case law

Rajesh Jhaveri Stock Brokers LTD.

Case: Whether intimation u/s 143(1) can be treated as order of Assessment for the purpose of 147??

Held: Assessee cant challenge on the grounds of change in opinion, since making the adjustment u/s 143[1] AO has no power to beyond the information given in return & make any allowance or disallowances. Hence 143[1] Intimation can't be treated as order of Assessment.

Aventis Pharma

Case: Can assessee open reassessment on the basis on change in opinion

Held: NO

Hemant Trader

Case: can notice u/s 148 be issued solely on the grounds that survey u/s 133A was carried out where nothing has been found therein which indicate escapement of Income

Held: merely because survey has taken place cannot be a ground for reopening of Assessment something more is required i.e. evidence.

Sky Light Hosp. LLP v. Assistant CIT (Del) [2018]

Is notice for reass. issued u/s 148 on the basis of tax evasion report received from Investigation Unit of Income-tax department valid, if such notice has been issued erroneously in the name of the erstwhile Co which has now been converted into an LLP?

HC observed that notice issued on the basis of tax evasion received from investigation unit of IT Dept. is valid since there was a reason to believe even though the notice was erroneously issued in the name of earlier company

4. ASSESSMENT PROCEDURE

Ranbaxy Laboratories Ltd (Delhi)/Jet Airways (I) Ltd (Bombay)

Case: Can the AO reassess issues other than the issues in respect of which proceedings were initiated u/s 147 when the original "reason to believe" on basis of which the notice was issued ceased to exist?

Held : As per section 147, the AO may assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice in the course of proceedings under this section.

The Delhi High Court observed that the words "and also" used in section 147 are of wide amplitude. The assessment or reassessment must be in respect of the income, in respect of which the AO has formed a reason to believe that the same has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the "reason to believe" is not assessed or reassessed, it would not be open to the AO to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the sec as having escaped assessment. If he intends to do so, fresh notice un/s 148 would be necessary.

Godrej Industries Ltd (Bom)

Case: Will the subsequent amendment of law with retrospective effect validate a reassessment notice issued on a different ground before the retrospective amendment was made?

Held : The High Court held that the position of law on the date of issue of notice u/s 148 must be looked into and the retrospective amendment subsequent to issue of notice could not validate a notice issued earlier. It could only amount to change of opinion and the notice for reopening of assessment would become unsustainable. Accordingly, the reason for reopening the assessment cannot get validated by the retrospective amendment of law.

4. ASSESSMENT PROCEDURE

Vipin Walla (Del)

Case: Would the reassessment proceedings initiated u/s 147 against the legal heirs of the deceased assessee be valid if notice of reassessment was sent to the legal heirs after the limitation period, though a notice addressed to the deceased assessee was sent prior to the limitation period?

Held: The High Court, accordingly, held that issue of notice on the legal representatives beyond the limitation time would render the reassessment proceedings invalid.

Multiple Choice Questions

- | | | | | | | | | | |
|---|--|------|------|------|------|------|------|------|------|
| <p>1) "Belated return cannot be revised."
a) True b) False</p> | <p>6) Who among the following will verify the return of the company?
a) Founder of the Company
b) MD c) Senior most employee
d) Company itself</p> | | | | | | | | |
| <p>2) Time limit for issue of notice u/s 148 where income which has escaped assessment amounts to 1.5L will be --years from the end of relevant AY.
a) 2 b) 4 c) 6 d) 16</p> | <p>7) Every person is required to mandatorily quote Aadhar Card in
a) PAN Form b) ROI
c) Both d) None</p> | | | | | | | | |
| <p>3) Can Chartered Accountant be a TRP
a) Yes b) No</p> | <p>8) In case of LLP, who is authorised to verify the return
a) Designated Partner
b) Senior most partner
c) Any partner of LLP
d) Principal Officer</p> | | | | | | | | |
| <p>4) Ass. order u/s 154 will be amended if
a) Mistake apparent from records
b) Change of Opinion of AO
c) (a) & (b)
d) Cannot be rectified</p> | <p>Answers :</p> <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <tr> <td>1) b</td> <td>2) c</td> <td>3) b</td> <td>4) a</td> </tr> <tr> <td>5) c</td> <td>6) b</td> <td>7) c</td> <td>8) a</td> </tr> </table> | 1) b | 2) c | 3) b | 4) a | 5) c | 6) b | 7) c | 8) a |
| 1) b | 2) c | 3) b | 4) a | | | | | | |
| 5) c | 6) b | 7) c | 8) a | | | | | | |
| <p>5) Expenses of Special Audit will be paid by
a) Assessee b) PCIT/CIT
c) Central Govt</p> | | | | | | | | | |

4. ASSESSMENT PROCEDURE

Know your exam

- P1 The A.O issued a notice u/s142(1) on assessee on 24th Dec, 2021 calling upon him to file ROI for A.Y.21-22. In response to said notice, assessee furnished a return of loss & claimed c/f of business loss & unabsorbed depⁿ. State whether assessee would be entitled to carry forward as claimed in the return.
- P2 The regular assessment of MNO Ltd. for the A.Y 2019-20 was completed u/s 143(3) on 13th March, 2021. There was an audit objection by the Revenue Audit team that interest on loan should be disallowed partly as there was diversion of borrowed fund to sister concern without charge of interest Based on the above facts:
- State, with reasons, whether the A.O can issue notice u/s 148 on the basis of audit objection of the Revenue Audit team
 - If the action stated in (i) above is not permitted, what is the option open to the Revenue Department to deal with the said audit objection?
- P3 Dishant received a notice u/s 148 from A.O for A.Y. 2017-18 on ground that depreciation on certain assets was allowed in excess.A.O recorded reason for reopening. The original assessment was completed u/s 143(3). In course of reassessment proceeding, A.O also disallowed certain sum u/s 14A in respect of expenses purported to be in relation to dividend from companies & tax-free interest. However, A.O didn't record reason for applying provisions of sec.147 in respect of issue of disallowance u/s 14A and passed order disallowing excess depreciation and also certain sum u/s 14A. Is there any infirmity in order passed by the A.O?
- P4 The A.O has power to make assessment to best of his judgment, in certain situations. What are they?

4. ASSESSMENT PROCEDURE

- P5 Examine critically as per provisions of the Act “Can the A.O issue notice u/s 148 to reopen same assessment order on same grounds for which CIT had issued notice u/s 263 of the Act”?]
- P6 Is A.O empowered to assess/reassess an income chargeable to tax & has escaped assessment, in a case pending before Appellate Tribunal? Discuss
- P7 Does A.O have power to make any adjustment to income disclosed by assessee in the ROI in course of processing return u/s 143(1)?
- P8 Tai Ltd. filed its ROI for A.Y 2020-21 on 6th June, 2020. The return is selected for regular assessment u/s 143(3) for which notice u/s 143(2) is served on the company on 3rd Oct,2021. The company responded to the notice under section 143(2). State whether the service of the notice is within time and if not, whether the assessment order can be challenged by the assessee.
- P9 The assessment was made u/s 143(1) for A.Y 2019-20. The assessee has received a notice u/s 148 on 6th April, 2021 for reopening of assessment. Can the assessee challenge the legality of the notice on the ground of change of opinion?
- P10 The A.O within the powers vested in him u/s 142(2A), while examining the accounts of PNF Ltd., had ordered to get the same audited. The company challenges this order on the ground “that the opportunity was not provided to them by the A.O prior to passing of such an order”. Decide the correctness of the action of the A.O.

4. ASSESSMENT PROCEDURE

P 11 Ram, an individual, filed his return of income for the A.Y 2021-22 on 15.6.2021. He later discovered that he had not claimed deduction u/s80C in the said return. He claimed the said deduction through a letter addressed to the A.O. The A.O completed the assessment without allowing the deduction claimed by Ram. Is the A.O justified in doing so?

P 12 A company submitted the return of income for A.Y 2019-20 on 10th Oct,19. The A.O served a notice u/s143(2) on the company on 14th Sep, 2020 in order to make assessment u/s 143(3). Thereafter, on 3rd April, 2021, the A.O issued intimation u/s 143(1). Such intimation shows a demand for ₹10,500 towards tax & interest. Discuss the correctness of action of A.O.

P 13 Mr. Hari, aged 65 yrs, is a ROR in India for the A.Y.2021-22. He owns a HP in Dubai, which he purchased on 30.4.2017, & he also has a bank account in the Bank of Dubai.

(a) Mr. Hari contends that since his total income of ₹ 2,80,000 for the P.Y. 2020-21, comprising of income from HP & bank interest, is less than basic exemption limit, he need not file his return of income for AY.

(b) Mr. Hari also contends that the notice issued by the A.O u/s 148 in June, 2020 for A.Y.2013-14 is not valid due to the following reasons -
There is no escaped income relating to that year; and
The time period prescribed in sec.149 for issuing notice u/s 148 for A.Y. has since lapsed.

Discuss the correctness of the above contentions of Mr. Hari

Chapter 5 : Rectification

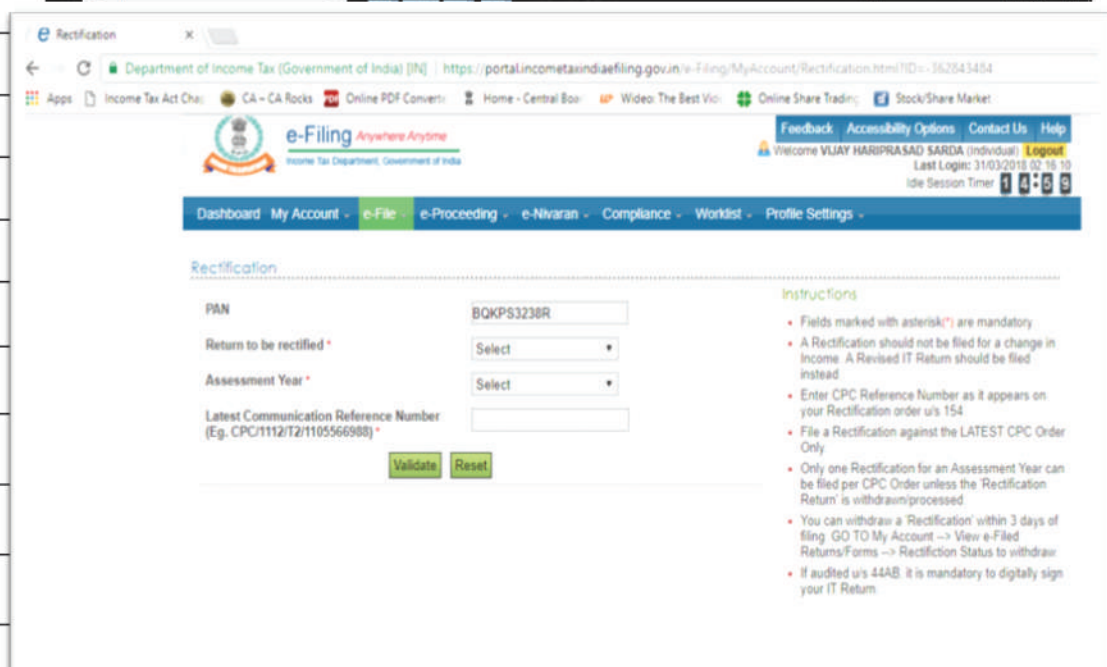
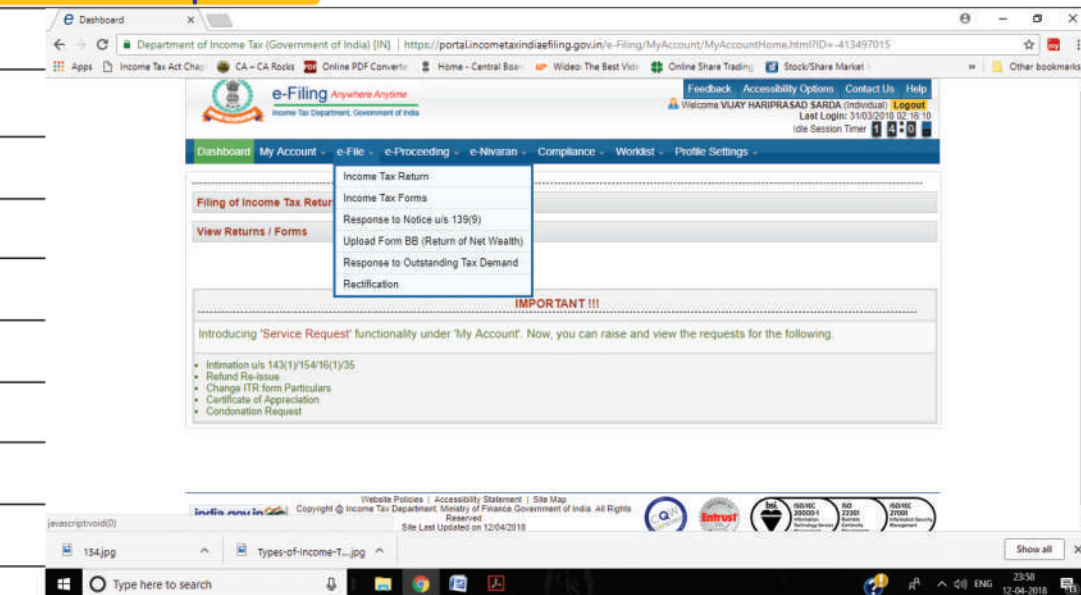
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5. RECTIFICATION

Space for Important Points / Notes

Practical Aspect



Sec.154 Rectification

With a view to rectifying any mistake apparent from the record an income-tax authority referred to in section 116 may, -

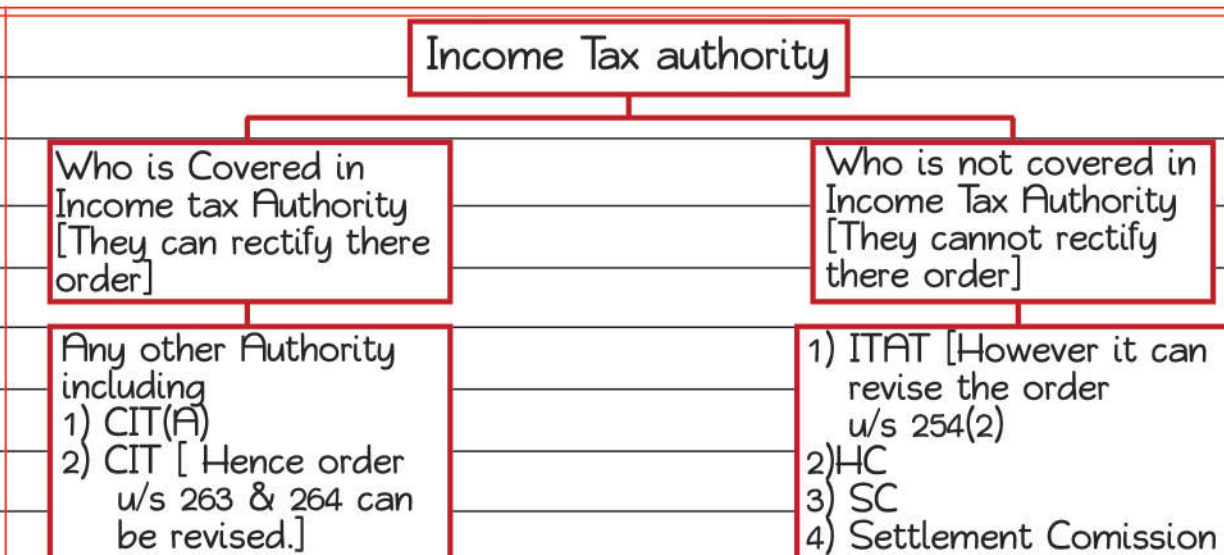
Amend any order passed by it under the provisions of this Act;

Amend any intimation or deemed intimation u/s 143(1)

Amend any intimation u/s 200A(1)/206CB [TDS/TCS Intimation]

There is no fees payable by Assessee for rectification nor any form is prescribed.

5. RECTIFICATION



Order:

- ✓ Intimation u/s 143(1)
- ✓ Intitimation of TDS Statement 200A/206CB
- ✓ Assessment order or reassessment order u/s 143(3)/144/147
- ✓ Rectification u/s 154
- ✓ Revision order u/s 263/264
- ✓ CIT(A) order 250
- ✓ Order passed by CIT/CCIT u/s 10(23C)/12AA/80G
- ✓ Order of partition of HUF u/s 170

Record:

- # Mistake must be apparent from record thus no new evidence can be furnished during rectification proceeding. Rectification can be done only on the basis or record available at the time of passing the order.
 - # Records include current records and previous records also.
 - # Mere change in opinion cannot be the basis for rectification
 - # **CIT vs India Cements Limited**: Where AO has passed assessment order on the settled law/decision on the date of assessment and
 - > Subsequently SC decision was given against assessee
 - > Law was amended retrospectively
- Rectification cannot be done as there was no mistake apparent from record however contrary decision are available [**ACIT Vs Saurashtra Kutch**

5. RECTIFICATION

Stock Exchange][As per ICAI: Subsequent decision of Supreme Court -
A mistake arising as a result of subsequent interpretation of law by the
Supreme Court would also constitute error apparent from the record.]

Sec 154(2) - Subject to the other provisions of this section, the
authority concerned—
may make an amendment u/s 154(1) of its own motion, and
shall make such amendment for rectifying any such mistake which has been
brought to its notice by the assessee or by the deductor or by the
collector, and where the authority concerned is the CIT (Appeals), by the
Assessing Officer also.

Sec 154(3) - An amendment, which has the effect of enhancing an assessment
or reducing a refund or otherwise increasing the liability of the assessee or
the deductor or the collector, shall not be made under this section unless
the authority concerned has given notice to the assessee or the deductor or
the collector of its intention so to do and has allowed the assessee or the
deductor or the collector a reasonable opportunity of being heard.

Sec 154(4) - Where an amendment is made under this section, an order
shall be passed in writing by the income-tax authority concerned.

Sec 154(5) - Where any such amendment has the effect of reducing the
assessment or otherwise reducing the liability of the assessee or the
deductor or the collector, the AO shall make any refund which may be due
to such assessee or the deductor or the collector.

Sec 154(6) - Where any such amendment has the effect of enhancing the
assessment or reducing a refund already made or otherwise increasing the
liability of the assessee or the deductor or the collector, AO shall serve

5. RECTIFICATION

on the assessee or the deductor or the collector, as the case may be a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued u/s 156 & provisions of this Act shall apply accordingly.

Sec 154(7) - The application for rectification u/s 154 can be filed before the expiry of 4 years from the end of the Financial Year in which the order sought to be amended was passed.

Sec 154(8) - Without prejudice to Sec 154(7), where an application for amendment under this section is made by the assessee or by the deductor or by the collector on or after the 1st day of June, 2001 to an income-tax authority referred to in Sec 154(1), the authority shall pass an order, within a period of 6 months from the end of the month in which the application is received by it,—

- a) making the amendment; or
- b) refusing to allow the claim.

If the Assessee has made the rectification application within the prescribed period of 4 years and the concerned Income-tax authority could not pass the rectification order within the said 4 years, then it is permitted that the Income-tax authority can make a belated rectification (after the said four years) TO THE ADVANTAGE OF THE ASSESSEE.

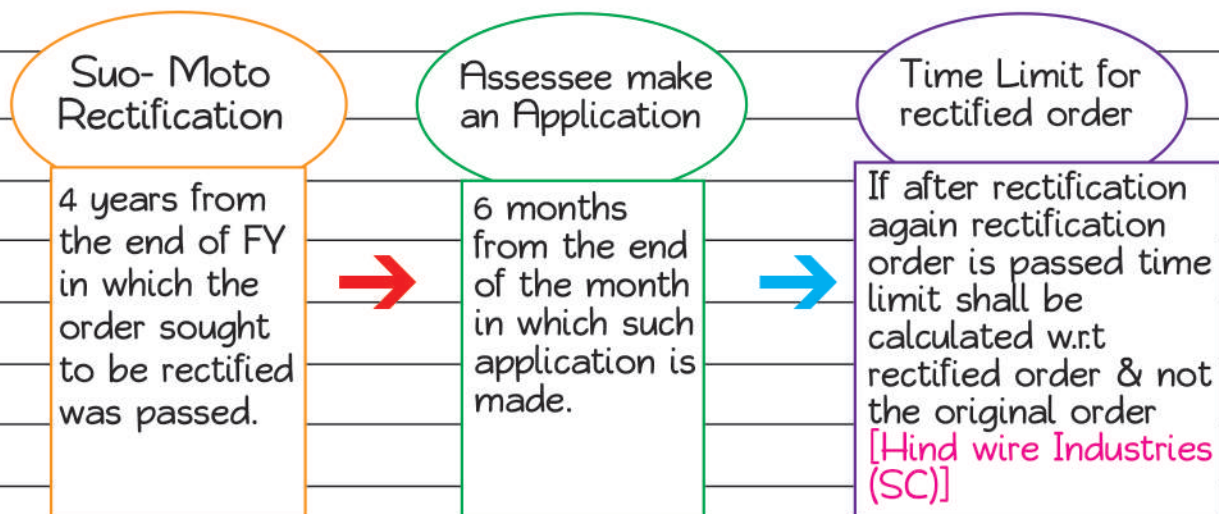
Time Limit:

Within 4 years from the end of FY in which the order sought to be rectified was passed.[Suo moto]

In case assessee makes an application then rectification order shall be passed within 6 months from the end of the month in which such application is made. If the order is not passed within 6months then, the

5. RECTIFICATION

the rectification application shall be deemed to be allowed in favor of assessee.



Relevant Case Laws

Hind Wire Industries Limited (SC)

In this case, the assessee was assessed for AY 2010-11 u/s 143(3) by an assessment order dated 30.1.2011. In the said assessment, the AO allowed depreciation on buildings @ 5% whereas the correct rate of depreciation was 10%. The AO also did not allow deduction u/s 43B although it was clearly allowable. The assessee filed a rectification application u/s 154 on 12.7.2014 claiming the deductions u/s 43B. However, the assessee did not claim the issue of depreciation in the said application. The AO passed the rectification order on 31.12.2014 and allowed deductions u/s 43B. The assessee filed another rectification application u/s 154 on 4.7.2017 claiming that depreciation should have been allowed to him @ 10% instead of 5%. The issue arose before the Supreme Court as to whether the rectification application is valid since it was made after the expiry of 4 years from the end of FY in which the order u/s 143(3) was passed.

The Supreme Court held that sec 154 provides that rectification can be made before the expiry of 4 years from the end of the FY in which the order sought to be amended was passed. The order sought to be amended

5. RECTIFICATION

amended will not necessarily mean the original order but also the rectified order. The AO should have rectified both the mistakes in his rectification order passed u/s 154 on 31.12.2014. Since he has rectified only one mistake, there is a mistake in the order passed u/s 154. Therefore, the rectification application made on 4.7.2017 was valid and the same could have been made upto 31.3.2019. Therefore, the AO should have considered the rectification application and allowed depreciation @ 10%.

Haryana state Handloom & Handicraft Corp

Case: can AO issue notice of Rectification to a mistake apparent from record in the intimation u/s 143[1] after the issue of valid notice u/s 143[2]?
Held: NO, Rectification of intimation cannot be done after the issuance of notice u/s 143[2] & during the pendency of proceeding u/s 143[3].

Multiple Choice Questions (MCQs)

- 1) Rectification is covered u/s
a) 234 b) 154 c) 167 d) None
- 2) Rectification can be done either
a) Suo moto b) Application made c) both of above d) none of above
- 3) Rectification suo moto shall be made within _____ years
a) one b) two c) three d) four

Answers : 1) b 2) c 3) d

For Your Practice - Solved Questions

- P.1 R, an individual, filed his return of income for AY 2020-21 on 31.07.2020. He later discovered that he had not claimed deduction u/s 80C in the said return. He claimed the said deduction through a letter addressed to the AO. The AO completed the assessment without allowing the deduction claimed by R. Is the AO justified in doing so?

5. RECTIFICATION

Solution

In case of GOETZE (INDIA) LTD. VS. CIT (SC) the Supreme Court held that a claim can be made before the AO in the assessment proceedings only through a revised return and not through a letter. Therefore, if a deduction has not been claimed in the return and the assessee wants to claim the said deduction in the assessment proceedings then he can do so, only by filing a revised return. The AO cannot entertain such claim made by the assessee through a letter.

In the present question, in view of the above, AO was justified in his action.

Know Your Exams

- P1 Is it valid in law to rectify Assessment order u/s 154 due to subsequent change of law on retrospective basis? Also, whether SC judgement would warrant rectification u/s 154 in respect of order passed earlier by AO.
[May-11]
- P2 EIH Private Ltd's assessment for AY 2015-16 was completed u/s 143(3) on 31st Dec'17. The co went in appeal to CIT(A) & appeal was decided on 16th August'21 & appeal effect was duly given by AO on 25th Aug'21. Thereafter, on 1st Sept'22 the A.O noticed a mistake in calculation of depreciation on a particular block of assets, which reduced assessment .AO issued notice u/s 154 for rectifying ,mistake is rectification permissible[M05]
- P3 In an order of assessment for A.Y., the assessee noticed a mistake for which application u/s 154 was moved & order was rectified. Subsequently, assessee moved further application for rectification u/s 154 which was rejected by A.O on ground that order once rectified cannot be rectified again. Is the contention of AO correct?[May-03]

5. RECTIFICATION

P4 Mr shyam has e-filled his ITR for AY within due date declaring total Income ₹9.5L. Such total income include dividend from Indian co. of ₹50000 & LTCG on sale of shares of ₹2L. However Mr shyam correctly disclosed both such income in schedule of exempt Income. Consequently said return got processed u/s 143(1) denying exemption & intimation has been served on Mr shyam raising a demand of Tax. After receipt of said Intimation assessee filled a revised return but time limit was lapsed & such revised return declared invalid. Assessee filled for rectification u/s 154 which was also rejected by AO. Discuss the correctness of Action of AO? [May-16]