

Assessment under Income Tax

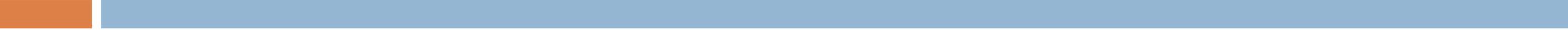


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Introduction



Assessment under Income Tax

- The process of examining the return of income by the Income Tax Department is called as Assessment.
- Assessment includes re-assessment and also penalty proceedings
- Types of Assessment
 - Summary Assessment u/s 143(1)
 - Scrutiny Assessment u/s 143(3)
 - Best Judgement Assessment u/s 144
 - Faceless Assessment u/s 144B
 - Income Escaping Assessment u/s 147 (Re-assessment)

Notice

- Notice sent to the address in the PAN
- PCIT vs I Ven Interactive Ltd. (Civil Appeal No. 8132 of 2019) – 18 Oct 2019

Summary Assessment u/s 143(1)

- Assessment as to the verification of arithmetical error or an incorrect claim or disallowances are automatically done
- No detailed scrutiny of the return is carried out
- To be made within a period of 9 months from the end of the FY in which ROI (Return of Income) is filed

Important case laws on Sec 143(1)

-Asushi Yoshida & Ors Vs Asst CIT (2012) 67 DTR 347 (Del)

Scrutiny Assessment u/s 143(3) cannot be initiated if the AO fails to issue notice u/s 143(2) within the time limit after intimation u/s 143(1). However, the AO shall have power to issue notice u/s 147/148.

CIT vs K. V. Mankaram and Co (2000) 245 ITR 353 (Ker)

No appeal u/s 246A or application for revision u/s 264 can be made against sec 143(1) intimation as it is not an assessment order. Revision u/s 263 is also not possible on intimation u/s 143(1).

Sec 154 ?

Scrutiny Assessment u/s 143(3)

- A detailed scrutiny as to confirm the correctness and genuineness of claims, deductions, etc. made by the taxpayer in the ROI
- Notice u/s 143(2) to be served on the Assessee within 3 months from the end of the FY in which ROI is filed
- To be completed within 12months from the end of the AY (Sec 153(1))

- If tax payer is not satisfied
 - apply for rectification u/s 154
 - go for revision u/s 263 or 264
- Appeal against 143(3) shall lie before higher authorities such as CIT(A), ITAT, High Court and the Supreme Court in that order

Best Judgement Assessment u/s 144

-If an Assessee fails to file ROI, the Assessing officer shall use his/her best judgement and perform assessment or require the assessee to provide for information

-To be completed within 12 months from the end of the AY (Sec 153(1))

Circumstances in which notice u/s 144 shall be issued

- If ROI not filed u/s 139(1) (within time limits)
- If revised ROI not filed u/s 139(4) (belated) or (5) (revised)
- Failure to comply with the terms of notice u/s 142(1) or with direction u/s 142(2A)
- Failure to comply with all the terms of notice u/s 143(2)

Rejection of Books of Accounts in order to assess u/s 144

CIT Vs Gian Chand Labour Contractors

However, where the Assessing Officer is not satisfied with the correctness or completeness of the said books, he may reject the same and estimate the income to the best of his judgment in accordance with the provisions of section 144 of the Act.

**Principal Commissioner of Income-tax v. Marg Ltd.
[2017 SCC OnLine Mad 37852]**

The Division Bench of the High Court of Madras has held that the rejection of books of account is sine qua non before the AO proceeds to make his own assessment.

- Rejection of Accounts audited by CA
- Rejection of Books in case of tax audit

- Rejection of Books in case of exempt Income
 - Agri Income;

- Estimation of Income when Books of Accounts need not be maintained

Faceless Assessment u/s 144B

- Introduced in the **Finance Act, 2019** for faceless e-assessment
- Eliminates the human interface between the taxpayer and the IT department
- To ensure accuracy, transparency, and efficiency
- Assessment, re-assessment, or re-computation u/s 143(3) or 144 or 147 shall be made in respect of such territorial area, or persons or class of persons, or incomes or class of incomes, or cases or class of cases as may be specified by the board shall be made in a faceless manner as prescribed.
- 4 units contribute to the thorough examination & validation and maintains the integrity of the assessment process.

Faceless Assessment Units and Authorities

Assessment Unit

- Conducts the assessment
- Prepares draft assessment order

Verification Unit

- Conducts enquiries or verifications
- Requests further information

Technical Unit

- Provides technical assistance
- Offers expertise in complex matters

Review Unit

- Reviews draft assessment order
- Ensures compliance with legal provisions



Issues in Faceless Assessment



How to handle Faceless Assessment

Income Escaping Assessment u/s 147

- If any income chargeable to tax has not been assessed, AO can re-open the case to reassess
- Includes losses if overreported by the Assessee
- OBH to be given to Assessee (Sec 148A), then only 147 can be invoked (Amended by Finance Act 2021) – mere “reason to believe” shall not be a reason for re-opening
- Prior approval for 147 notice no longer required if grounds are established u/s 148A(d)

Information that suggests income has escaped Assessment

- Any flagged information as per CDBT rules from time to time
- Any audit objection to the effect that assessment not done in accordance with the provisions of the Act
- Any information received u/s 90 or 90A or made available u/s 135A Scheme
- Any information as a consequence of the order of a Tribunal or a Court
- Search initiated u/s 132 or Books of accounts, other documents or any assets are requisitioned u/s 132A (on or after April 1, 2021
- Survey conducted u/s 133A other than u/s 133(2A) or 133(5) on or after April 1, 2021
- Seizure of money/ bullion/ jewellery/ other valuable articles/ thing seized or requisitioned u/s 132A on or after April 1, 2021 belonging to the Assessee.

Information suggesting income escaping assessment

(2022) 329 CTR (Mad) 809 DR. MATHEW CHERIAN & ORS. vs. ACIT

- Caveat/pre-condition is that such information must enable the suggestion of escapement of tax. Then again, the mandate cast upon the officer under s. 148A(d) is that he is to decide whether it is a 'fit case' for issue of a notice for reassessment, upon a study of the material in his possession, including the response of the assessee.
- Thus, not all information in possession of the officer can be construed as 'information' that qualifies for initiation of proceedings for reassessment, and it is only such 'information' that suggests escapement and which, based upon the material in his possession, that the officer decides as 'fit' to trigger reassessment, that would qualify.

- **The ‘information’ in possession of the Department must prima facie, satisfy the requirement of enabling a suggestion of escapement from tax.** This is not to say that the sufficiency or adequacy of the ‘information’ must be tested, as such an analysis would be beyond the scope of jurisdiction of this Court in writ jurisdiction. However whether at all the ‘information’ gathered could lead to a suggestion of escapement from tax can certainly be ascertained.
- With the necessity for ‘belief’ effaced from the statutory provision, the dimension of subjectivity that existed pre 1st April, 2021 stands substantially whittled. In the present regime of reassessments, **an AO must be able to establish proper nexus of information in his possession, with probable escapement from tax.** No doubt the term used is ‘suggests’. **That is not to say that any information, however tenuous, would suffice in this regard and it is necessary that the information has a live and robust link with the alleged escapement. This is where settled propositions assume relevance and importance.**

Case laws for Section 148

Notice is unsigned

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

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

Notice is unsigned/ Date of despatch

- **[2022] 449 ITR 517 (Delhi) Suman Jeet Agarwal vs. ITO**
 - Notices which were sent through the registered e-mail ID of the respective JAOs, though not digitally signed are held to be valid.
 - For uploading of the Notices in the E-filing portal of the assesseees, to be considered valid service, the Department should have issued a real-time alert as provisioned in the aforementioned Section 144(B)(6)(ii)(a) of the Act of 1961. If this is not followed it is akin to no due dispatch of Notices.
 - Mere generation of Notice on the ITBA Screen cannot in fact or in law constitute an issue of notice, whether the notice is issued in paper form or electronic form. In case of paper form, the notice must be despatched by post on or before 31st March 2021 and for communication in electronic form the e-mail should have been despatched on or before 31st March 2021.
 - When Notices were issued, the date and time of when the ITBA e-mail software system is triggered and the Notices leave the last ITBA server would be considered
 - The issuance of an e-mail attaching an electronic notice to an unrelated e-mail address does not constitute due despatch and therefore, the Notices cannot be said to have been issued on 31st March 2021

Procedure under Section 148A

- An opportunity of being heard is given to the Assessee before issuing notice u/s 148 if any income has escaped assessment u/s 147
- Minimum of 7days but not more than 30days given for furnishing explanation
- If ITO not satisfied with the reply shall decide to re-open the case by issuing notice u/s 148
- Notice (u/s 148) to be issued within 3 years from the end of the relevant AY (Sec 149(1)(a)) but up to 10 years if income escaped assessment is 50lacs or more (Sec 149(1)(b))

Caselaw for Sec 148A

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

- The contention of the Revenue that though only three days time was given to the petitioner to file its reply but the order has been passed on seventh day as the assessee did not file any reply, is not acceptable as the legislature has categorically stipulated mandatory timeline of minimum ‘seven days’ and maximum ‘Thirty days’ to be given to the petitioner before the order under s. 148A(d) can be passed for reassessment proceeding. In the case at hand admittedly, the same has not been followed; as such the instant writ application is maintainable under the writ jurisdiction.

(2023) 330 CTR (Chhattisgarh) 317 U.S. ASSOCIATES vs. PCIT

- In the absence of the same being reflected in the notice, the assessment yet being made of the said amount would be prima facie bad in the light of the judgment of the Supreme Court in case of *Commr. of Customs vs. Toyo Engineering India Ltd.* 2006 (7) SCC 592 wherein in para 16 the Supreme Court has emphatically held that the Department cannot travel beyond the show-cause notice. Order and notice set aside.

Order to be passed on “material on record” and not on suspicion

(2022) 447 ITR 698 (Raj) Abdul Majeed vs. ITO

- **The expression ‘material available on record’, has been** consciously used by the legislature to put a fetter on the exercise of power in the manner that an order under s. 148A of the Act deciding to issue notice under s. 148 of the Act can be based only on the basis of material available on record.
- The authority, as is apparent, sought to bridge the statutory impediment of section 149(1)(b) not on the basis of any material available on record but only with the help of a surmise that the assessee may have some more accounts. Even before this Court, when the reply has been filed by the respondent, no material has been placed to show that at the time when the authority passed order under s. 148A of the Act, there was some material on record that the income chargeable to tax which escaped assessment amount to or is likely to amount Rs. 50,00,000 or more for that year.
- Only on the basis that the cash deposits of Rs. 19,39,000 chargeable to tax have escaped assessment, without anything more, the authority was not justified in jumping to the conclusion that the assessee may have more bank accounts. If such an interpretation is placed on the provision of s. 148A(d) of the Act with reference to expression ‘material available on record’, then in that case, it will open flood gate and even without availability of any material, the authority would be initiating proceedings under s. 148 of the Act, which will completely frustrate the object of incorporation of s. 148A in the Act. It is well settled principle of interpretation that the taxing statute is required to be construed strictly.

Case Study

- GST / service tax data difference
- Excel files available in a system seized in a Survey of 3rd Party
- Notes / loose leaf seized during Survey.
- Under valuation / Over valuation of Sales / Exports

Issues

- Jurisdictional Issues
- Ignoring Material on hand
- Non furnishing of Data
- Assumption and Surmises
- Wrong application of law
- Reliance on Irrelevant decisions
- Default
- Factual Issues
- Estimated Additions

Queries ?



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