



# Assessment Procedure

---

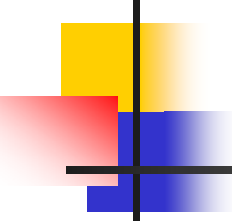
## **Presentation By : -**

CA Sanjay 'Voice of CA' Agarwal

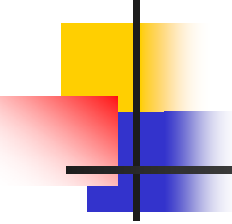
CA Sidharth Jain

Team - Voice of CA

# WHAT IS ASSESSMENT?

- 
- Procedure for determining tax liability and recovery of tax
  - Section 2(8): "Assessment" includes reassessment
  - "Assessment" is wide enough to include all types of assessments including penalty proceedings
  - - C. A. Abraham v. ITO [41 ITR 425 (SC)]
  - Quasi-judicial proceedings
  - Which Law Applicable--Issue of notice
  - Sufficient opportunity of being heard
  - Speaking order
  - Rule of Evidence

# TYPES OF ASSESSMENT?

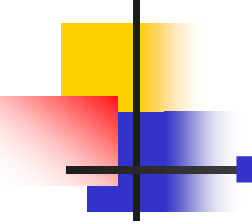
- 
- Inquiry before Assessment Section 142(1)
  - Summary Assessment Section 143(1)
  - Scrutiny Assessment Section 143(3)
  - Best Judgment Assessment Section 144
  - Reassessment Section 147
  - Search Assessment Section 153A
  - Others not as per Act, Evolved per convention

# Inquiry before Assessment --142(1)

- A.O. can serve notice to the assessee for the following purposes:
  - Submit return of income
  - Produce such documents/accounts as may be required
  - Furnish information on required matters

If a person has not furnished his return of income within the due date given under section 139(1), the A.O. can serve a notice under section 142(1)(i) at any time after the expiry of time limit given under section 139(1)--95 ITD 269 (DELHI)(SB) Motorola Inc.v/s DCIT.

# Inquiry before Assessment

- 
- For the purpose of obtaining full information in respect of the income or loss of any person, the Assessing Officer may make such enquiry as he considers necessary
  - Special Audit u/s 142[2A], An opportunity less traveled by CA's.

Having regard to nature and complexity of accounts and in the interest of Revenue.

Procedure

Natural Justice

Duty of Special Auditor

Time for Submission of Report, extension, etc.

Remuneration for Special Audit.

# Summary Assessment

- 143[1], pre amendment, permissible adjustments
- 143[1], present status.
- Appellable under section 246A?
- No intimation can be issued after issue of notice u/s 143(2)- Gujarat Electricity Board 260 ITR 84 (SC)
- Intimations from CPC, amendment u/s 156.

# Scrutiny Assessment-143[3]

- To ensure that the assessee has not
  - Understated the income; or
  - Computed excessive loss; or
  - Underpaid the tax
- Time limit of service of notice
  - Within 6 months from end of the AY/end of the FY in which ROI filed.
- Reasons to believe qua 143(2) notice--N.R. Paper and Board 234 ITR 733
- Annual Scrutiny Guidelines—Access/RTI.
- 143(2) in case no return filed? Aziz Qazi and Bros. Vs. ITO
- Revised Return, Fresh 143(2)?-- Gopal Das  
Purshotam Das Vs. CIT 9 ITR 130 (Allahabad)

# Scrutiny Notice-143[2]

- Personal attendance without production of evidence?  
Rajmani Devi Vs. CIT 5 ITR 631 (Allahabad)
- Notice u/s 143[2]—mandatory---Service/Issuance.
- Service of notices Sec 282.
- Section 292BB (Delhi SB In Kuber Tobacco)
- Practical sense approach.
- Copy of notice not in assessment folder, 143[2], held bad in law.  
  
"that mere noting in the order sheet would not suffice and the copy of the notice issued under section 143(2) of the Act was not available on record." vide DHC in 330 ITR 040 in CIT v/s CPR Capital Services Ltd.
- Department to prove service of notice. CIT v/s v. Silver Streak Trading P. Ltd. 326 ITR 418 DHC.



# Scrutiny Notice-143[2]

- 148 notice pending 143[2] time limit. CIT v. TCP Ltd. [2010] 323 ITR 346 (Mad). All DHC in KLM Royal Dutch.
- 143[2] only after ITR is filed, 143[2] served before return is filed, assessment bad in law. DHC in DIT v. Society for Worldwide Inter Bank Financial, Telecommunications 323 ITR 249.
- Presumption as to Valid service of 143[2] notice,
  - Notice sent by registered post well before expiry of time limit and not received unserved. DHC in CIT v. Yamu Industries Limited 306 ITR 309.
  - Record not disclosing envelope undelivered or received back--  
Presumption that notice served not rebutted by assessee. DHC in CIT v. Madhsy Films P. Ltd 301 ITR 069.

# Scrutiny Assessment-143[3]

- Hearing of case- Time for attendance-**Circular 230 dated 27/10/1977**
- Adjourments. **S.K. Gupta Vs. CST 61 STC 20, 22 (Del. HC)**
- A.O. to pass the order within 14 working days after the date of the last hearing- [**Letter no. 241/23/70 dated 23-10-1970**]
- **Rules of evidence**
  - Value of Affidavit (Mehta Parik & Co. 30 ITR 181)
  - Book of Accounts (CBI Vs. V.C. Shukla), soft copy thereof
  - Audit Report when books destroyed (DHC in Jay Engg.)
  - Principles of Natural Justice, 142[3], judicial discipline.
  - Cross – Examination, Confrontation.
  - Resjudicata / estoppel / waiver / consistency.
- **Right to obtain Certified copy of Assessment order,** sections 74 to 78 of Indian Evidence Act, 1872.

# Issues in Assessment<sup>H</sup>

## ■ CAPITAL EXPENDITURE VS REVENUE EXPENDITURE

- SETTING UP AND ROYALTY ON SALES
- SOFTWARE EXPENDITURE
- EXPENDITURE ON LEASED PREMISES
- INTEREST EXPENDITURE ON NEW PROJECT
- SETTING OF EXPENDITURE AGAINST PRE-COMMENCEMENT INCOME
- COST OF ABANDONED PROJECT
- PRIOR PERIOD EXPENDITURE
- LOSS OF RE-POSSESSED ASSETS

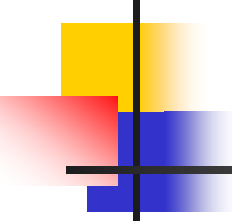
# Issues in Assessment<sup>H</sup>

## ■ SECTION 68


---

- Share capital
- Loans,
- Capital receipts
- Sundry creditors
- Common sense approach and use of departmental tools

# Issues in Assessment<sub>H</sub>

- 
- Deemed Dividends.
  - Section 56[2], gifts.
  - 43B.
  - Royalty.
  - Stock Statements.
  - GP/NP, trading additions.
  - 40(a)(ia)—partial deduction/ capital items, etc.
  - 40A(2)(b)- payments to related parties.
  - 41[1].
  - Bad Debts.
  - Interest on borrowed capital. 37[1] v/s 57[1]
  - Section 14A.
  - Incentive Deductions.

# Precautions in Assessment<sub>H</sub>

- 
- Punctuality.
  - Promptness and knowledge of the case.
  - Noting of order sheet.
  - Cryptic and relative reply.
  - Humble-ness
  - Raise alternative arguments.
  - Know your rights.
  - Acknowledgement of replies.
  - Keep windows/vistas open.
  - Paging and sequential order
  - Submit written replies.
  - Refer past assessments, incase required.
  - Factum of production of Books of accounts.

# Miscellaneous Issues

- Section 142A
- Section 144, GP/NP rate.
  - Peak credit, telescoping, etc
  - AIR Scrutiny, cash deposits cases
  - Section 145, TAS
  - Assessment order, attributes.
- Departmental updates/instructions.



# THANK YOU !!!

---

**CA Sanjay 'Voice of CA' Agarwal**

**CA Sidharth Jain**

**Team – Voice of CA**