

**Drafting of Replies for various issues in  
Income Tax Assessment**  
*(Special focus on Faceless Assessments)*

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# Need for communication with Department

## A. Communication in relation to Assessment of Income

- ❑ Response to Notices issued u/s 143(2) or 148 or 153A or 153C of the Act
  - ❑ Preliminary response to aforesaid notices enclosing return and further request for furnishing reasons to believe
  - ❑ Raising objections to reasons to believe provided by AO
  - ❑ Furnishing of response on legal issues
  - ❑ Furnishing of factual details
  - ❑ Response to Show Cause Notice before final conclusion of assessment proceedings
  - ❑ Request for Stay of Demand and Stay of Penalty Proceedings
  - ❑ Application for rectification of errors apparent from record
- ❑ Response to Summons issued u/s 131 of the act
- ❑ Response to notice issued u/s 133(6) of the act

## B. Communication in form of Applications/ Requests for other matter

- ❑ Application for registration of trust with CIT (Exemptions) for various exemptions,
- ❑ Application for grant of certificate for lower deduction of TDS

# Content of communication with Department

- ❑ Communication of Facts to the Assessing Officer
  - ❑ Facts to be communicated in a pointed manner
  - ❑ Ensure precise and accurate matter to be reported therein
- ❑ Explaining situations or perspective to the Assessing Officer
  - ❑ Situations or perspectives shall be mentioned with specific sub-headings
  - ❑ Pointed findings under a different situations shall be mentioned in reply with its practical implications.
  - ❑ Alternate Claims shall also be mentioned where implication under different situations are explained.
- ❑ Raising legal issues i.e. Point of Law before the Assessing Officer
  - ❑ Relevant extracts of legal references shall be quoted in the reply
  - ❑ Inference drawn from specific point of law shall be explained in context of the matter in hand separately
  - ❑ In context of matter in hand, conclude each observation with implication of such point of law on actual addition

# Basic Principles for Drafting of any Response

- ❑ Ensure accuracy of facts to be mentioned in response
- ❑ Ensure proper grammar and language in drafting a response
- ❑ Be concise and use short sentences while drafting a response
- ❑ Ensure important points are not overlooked while drafting a response
- ❑ Incorporate Introduction and Conclusion to every specific issue while drafting a response

# 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)]

## **Basic Features of Assessment**

- ❑ Quasi-judicial proceedings
- ❑ Sufficient opportunity of being heard
- ❑ Speaking order
- ❑ Rule of Evidence
- ❑ Issue of notice must be issued within time limit prescribed under the act and shall be served upon the assessee in accordance with provisions of section 282 of the act.

# Type of Assessment under Income Tax Act?

- ❑ Inquiry before Assessment u/s 142(1)
- ❑ Summary Assessment u/s 143(1)
- ❑ Scrutiny Assessment u/s 143(3)
- ❑ Best Judgment Assessment u/s 144
- ❑ Income Escaping Assessment/ Reassessment u/s 147
- ❑ Search Assessment u/s 153A (*Will be discussed on 05.12.2020*)
- ❑ Survey Assessment u/s 153C (*Will be discussed on 05.12.2020*)

# Legal Provisions related to Assessment u/s 143(3)

## Issuance of Notice u/s 143(2)

(2) Where a return has been furnished u/s 139, or in response to a notice u/s 142(1), the AO 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 AO or to produce, or cause to be produced before the AO any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.

## Assessment of Income u/s 143(3)

(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the 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

# Legal Analysis of Faceless Assessment Scheme 2020

- Central Government by Finance Act, 2018, inserted 2 new sub-section i.e. 143(3A) & 143(3B) which read as follows:

**Section 143(3A)**: The CG may make a scheme, by notification in the Official Gazette, **for the purposes of making assessment of total income or loss of the assessee under sub-section (3)** so as to impart greater efficiency, transparency and accountability by—

- Eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible;
- Optimizing utilization of the resources through economies of scale and functional specialization;
- Introducing a team-based assessment with dynamic jurisdiction.

**Section 143(3B)**: The CG may, for the purpose of giving effect to the scheme made under sub-section (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.

Provided that no direction shall be issued after the 31st day of March, 2020.

- Thereafter, Finally, the Government notified a Scheme names as "E-Assessment Scheme, 2019" u/s 143(3A) vide Notification No. 61/2019 dated 12.09.2019 (further supplemented by the direction u/s 143(3B) vide Notification No.62/2019 dated 12.09.2019) to conduct e-Assessments proceedings w.e.f. 12.09.2019
- Scope of E-assessment Scheme, 2019**:- As per the definition of "Assessment" provided in E-assessment Scheme, assessment means "**the assessment of total income/loss u/s 143(3) of the Act**".

- **CG Vide Finance Act, 2020 made following amendments in section 143(3A) & 143(3B):-**
  - In Section 143(3A), Word “Section 144” inserted. **Now CG can also make scheme for the purpose of making assessment u/s 144 of the Act in addition to assessment u/s 143(3).**
  - In Proviso to Section 143(3B), “Year 2020” is substituted with “Year 2022”. It means now CG can issue direction for scheme notified u/s 143(3A) upto 31<sup>st</sup> March, 2022.

Hon’ble PM on 13<sup>th</sup> August 2020 announced that all the assessment proceeding from 13<sup>th</sup> August, 2020 shall be conducted in Faceless Manner. To give the effect to PM’s announcement, CG issued following two notification:

- i. Notification No. 60 of 2020:-** In exercise of the power conferred u/s 143(3A) of the Act, CG amend the E-Assessment Scheme, 2019 and rename it is as Faceless Assessment Scheme, 2019. Further in the definition of “Assessment” assessment u/s 144 is also included which means now assessment order u/s 143(3) and best judgment assessment u/s 144 shall be passed under Faceless Assessment Scheme, 2019.
- ii. Notification No. 61 of 2020:-** In exercise of the power conferred u/s 143(3B) of the Act, CG amends direction issued vide notification no. 62 of 2019.

To give the effect to PM’s announcement CBDT issued an order u/s 119 of the Act dated 13<sup>th</sup> August, 2020 and directs that all the assessment orders shall be passed by NeAC through Faceless Assessment Scheme, 2019 except the following two assessment order:-

- i.** Assessment order in case assigned to Central Charges.
- ii.** Assessment order in case assigned to International Charges.

# COMPARISON BETWEEN E - ASSESSMENT SCHEME AND FACELESS ASSESSMENT SCHEME

Particular	E Assessment Scheme, 2019 (Applicable upto 12 <sup>th</sup> August 2020)	Faceless Assessment Scheme, 2019 (Applicable from 13 <sup>th</sup> August 2020)
Applicability	Applicable only in relation to assessment proceeding u/s 143(3) of the Income Tax Act, 1961.	All assessment proceeding under the Income Tax Act except with central charge and international taxation charge
Non – Applicability	<p>Following categories of assessments were kept outside the purview of E-Assessment:</p> <ol style="list-style-type: none"> <li>1. Re-assessment u/s 147.</li> <li>2. Assessment u/s 153A &amp; 153C.</li> <li>3. Best Judgement assessment u/s 144.</li> <li>4. Assessment related to International Taxation.</li> </ol>	<p>Following categories of assessments are kept outside the purview of Faceless Assessment:</p> <ol style="list-style-type: none"> <li>1. Assessment cases with Central Charges.</li> <li>2. Assessment related to International Taxation.</li> </ol>
Compulsion	Assessment order which was required to be passed under this scheme, if passed otherwise shall not be treated as	Any assessment order passed by department which is required to be passed through Faceless Assessment

# Other Legal Points related to Assessments

- Issuance of notice is condition precedent for making assessment u/s 143(3) of the Act. If no notice was issued or the notice issued is proved to be invalid, then the assessment proceeding would also be treated as void-ab-initio.
- Provision of Section 282 shall be applicable on notice issued under section 143(2) of the Act, and accordingly service of notice can be made through registered post or speed post.
- As per the provisions of second proviso to section 153(1) of the act, for assessments being conducted or to be conducted in relation to AY 2019-20 or thereafter u/s 143(3) or 144 shall be completed within 12 months from the end of assessment year in which the income was first assessable.
- As per the provisions of first proviso to section 153(2) of the act, for assessments/ reassessments being conducted or to be conducted in relation to AY 2019-20 or thereafter u/s 147 shall be completed within 12 months from the end of the financial year in which the notice u/s 148 was issued.

# Issues encountered in Assessment or Reassessment

According to my experience of handling assessment and reassessment cases, following are the illustrative list of issues faced by professionals while handling such cases:

1. Further issue of shares during the year in light of section 56(2)(viib) of the act.
2. Unexplained Cash credit u/s 68 of the act on following transactions:
  - ▣ Share Application Money or Unsecured Loan
  - ▣ Sundry Creditors
  - ▣ Cash Sales
3. Deemed Dividend u/s 2(22)(e)
4. Disallowance u/s 14A r.w.r. 8D
5. Gifts received from relatives u/s 56(2)(x)
6. Non-deposit of employee's contribution to PF/ESI within due date u/s 36(1)(va)
7. Additions for variance in Gross Profit or Net Profit from Last Year
8. Remission or cessation of trading liabilities u/s 41(1)
9. Disallowance of Cash Payment exceeding Rs. 10,000 u/s 40A(3)
10. Mismatch in quantitative details

# 1. Further issue of Share Capital [Section 56(2)(viib)]

As per the provisions of section 56(2)(viib) of the act, a private limited company shall issue new share capital at a consideration not exceeding the fair value of shares as computed under the provisions of Rule 11UA of the Income Tax Rules, 1962. In this regards, file following documents:

- ❑ Computation of Fair Market Value of shares as on date of issue
- ❑ Copy of Valuation Report where valuation have been conducted in accordance with rule 11UA.
- ❑ Relevant supporting documents indicating:
  - ❑ Stamp Duty Value of the Immovable Property and/or
  - ❑ Market Value of Jewellery/ Bullion/ Piece of Art etc. and/or
  - ❑ Market Value of Intangible Assets - Goodwill/ Patent/ Trademark etc.
- ❑ Bank statement indicating receipt of money and other statutory documents regarding allotment of shares such as allotment letter, share certificate and return filed with ROC.

**Please click sub link given in mail at point No. vii**

## 2A. Share Capital or Unsecured Loan [Section 68]

As per the provisions of section 68 of the act, any amount found to be credited in the books of account shall be deemed to be unexplained cash credit where the assessee fails to offer any explanation or the explanation offered is not satisfactory in view of the AO. In its explanation, assessee is required to substantiate three aspects of the transaction i.e. Identity & Creditworthiness of the Lender and Genuineness of the transaction. In this regards, assessee shall submit following:

- ❑ List of Share Allottees or Unsecured Loans with address and PAN of said person.
- ❑ Attach copy of PAN, ITR-V, Bank Statements indicating impugned receipts and Confirmations from such share allottee or the lender in regards to each and every such transaction. Where share allottee or the lender is a corporate entity, attach copy of audited balance sheet indicating schedule wherein impugned transaction have been reported.
- ❑ Payment proof of interest on loan account and TDS return showing the TDS amount deducted on such Interest.
- ❑ Indicate specifically opening balances and actual amount received during the year being the amount received during the year can be considered to be cash credit u/s 68 of the act.

**Please click sub link given in mail at point No. xi**

## 2B. Sundry Creditor [Section 68]

In respect of the sundry creditors, assessee shall submit following:

- ❑ List of Sundry Creditors with address and PAN of said person.
- ❑ Attach copy of Invoice received from vendor in respect of corresponding purchases, copy of account, Bank Statements indicating payment made for such outstanding balance in subsequent period and Confirmations from such creditor in regards to each and every such transaction.
- ❑ Where sundry creditor is a corporate entity, attach copy of audited balance sheet indicating schedule wherein impugned transaction have been reported. (*Required in the case where bogus creditors are alleged.*)
- ❑ Payment proof of TDS and TDS return showing the TDS amount deducted on such expenses in respect of which creditor is outstanding.
- ❑ Indicate specifically opening balances and actual amount of purchases made or services received during the year being the additions during the year can be considered to be cash credit u/s 68 of the act.

**Please click sub link given in mail at point No. x**

## 2C. Cash Sales [Section 68]

In respect of the cash sales, assessee shall submit following:

- ❑ A comparative detail of monthly cash sales and other sales.
- ❑ Invoice Wise detail of cash sales with quantitative details and GST/ VAT collected thereon and deposit of same to the credit of exchequer.
- ❑ Comparison of closing stock as per stock register with stock details in Tax Audit Report/ Audited Financial Statements
- ❑ Detail of corresponding purchases of stock item sold in cash and detail of suppliers (incl. GSTIN and/or TAN) with amount of VAT/ GST paid thereon. In case of trader of agricultural produce, copy of mandi tax receipts etc. shall be attached to substantiate genuineness of purchases made from farmers in cash.

**Please click sub link given in mail at point No. ix**

### 3. Deemed Dividend

As per the provisions of section 2(22)(e) of the act, any loan or advance forwarded by any private limited company to any of following persons or concerns shall be deemed to be dividend paid to the extent such company possesses accumulated profits:

- Shareholders (*being beneficial owner*) holding 10% of voting rights in the company, or
- A concern in which such shareholder is a member or a partner and holds substantial interest therein i.e. at least 20% of profit sharing ratio, or
- Payment on behalf or for the benefit of such shareholder or concern.

However, such payments made in ordinary course of business are exempt from such deeming provisions. In this regards, assessee shall submit following documents:

- ❑ Detail of Shareholders including their PAN and Address and % of shareholding.
- ❑ List of concerns in which shareholders are substantially interested
- ❑ List of loan and advances forwarded to such shareholders or concerns and specific purpose for such loan or advance to establish that such payments are exempt from deemed dividend. Some of the explanations/ issues are as under:
  - ❑ Amount received from subsidiary as security for providing corporate guarantee will be exempt. **CIT vs. Accel Ltd. [2020] 118 Taxmann.com103 (Mad.)**
  - ❑ Advance received from company under an agreement to do job work for such company shall not be treated as deemed dividend. **CIT vs. Amrik Singh [2015] 62 Taxmann.com 213 (SC)**

**Please click sub link given in mail at point No. i**

## 4. Disallowance u/s 14A r.w.r. 8D

As per the provisions of section 14A, no expense incurred in relation to any income which is exempt from tax shall not be allowed as deduction from total income of the assessee. In this regards, Rule 8D(2) prescribes specific method for computation of such disallowances as under:

Total Disallowance u/s 14A r.w.r. 8D = Higher of:

- ✓ Total expense claimed by the assessee, or
- ✓ Sum of A & B, where

A = Expense directly attributable to exempt income

B = 1% of annual average of the monthly average of opening and closing balance of value of such investments where income from such investments are exempt

In this regards, file following details:

- Detail of total exempt income earned during the year and corresponding expenses incurred specifically for earning such income.
- Monthly detail of investments from which income earned is exempt.
- Refer to judgement of Hon'ble High Court of Delhi in Case of **Cheminvest Ltd. Vs. CIT [2015] 61 Taxmann.com 118 (Del.)** where it has been held that provisions of section 14A will not apply if no exempt income is received or receivable during the relevant previous year.

**Please click sub link given in mail at point No. ii**

## 5. Gift received from relatives [Section 56(2)(x)]

During the normal course of business, whenever assessee feels shortage of capital, he take gifts from relative. While accepting the gift, assessee did not consider the tax implication and simply accept the gift. During the assessment proceeding, if assessee is claiming any gift to be exempt u/s 56(2)(x) of the act, then initial onus is upon assessee to prove the genuineness of the gift, otherwise AO can make addition of the gift amount as undisclosed income u/s 68 of the Act.

- **Details to be Furnish to Prove Genuineness of Gift** - The assessee can furnish following evidence to make a *prima facie* case in its favour that the gifts are genuine:
  - Name, address & PAN of the Donor.
  - Bank statement of donor indicating the amount of gift paid.
  - Bank statement of donee indicating the amount of gift received.
  - Copy of ITR of donor to proved the creditworthiness of donor.
  - Affidavit by donor confirming the relationship with donee and that he has given gift to donee.
  - Audited Financial Statement of donor along with audit report, if available.
- Production of the above details would make out a *prima facie* case in favour of the assessee and that would eventually shift the burden to the AO to rebut the evidence.

**Please click sub link given in mail at point No. viii**

## 6. Employee's Contribution to ESI/PF [Section 36(i)(va)]

As per the provisions of section 2(24)(x) of the act, any amount received from employee as a contribution to ESI/PF/any other specified fund shall be deemed to be income of such person and correspondingly deduction u/s 36(va) shall be allowable if such person deposits such contribution of employees to relevant fund within due date for filing of Income tax Return. However, In this regards, department had different view that the such deduction will be available only in case such payment have been made with in due dates prescribed under said acts.

In this regards, a specific disclosure is required to be made in Form 3CD at clause no. 20b where date of such payments with corresponding due dates shall be mentioned. While drafting response to such issue, specifically indicate whether the impugned payments were made within due date of filing of ITR or not.

Further, refer decision of Hon'ble High Court of Delhi in case of **CIT vs. AIMIL Ltd. [2010] 321 ITR 508 (Del.)** wherein it was held that if contribution of employee have been deposited with authorities within due date of filing of ITR, no additions can be made in this respect.

**Please click sub link given in mail at point No. iii**

## 7. Variance in GP/NP Ratio from Last Year

In most of the notices issued u/s 142(1) of the act for conducting complete scrutiny assessment, a common question encountered thereby relates to comparison of Gross Profit Ratio and Net Profit Ratio in comparison to preceding years. In this regards, a comparative detail of Sales and Gross Profit Ratio and Net Profit Ratio shall be filed alongwith a subjective reply explaining reasons for any abnormal change in GP ratio. The reason behind such variance can be either increase in cost structure or due to abnormal reduction in quantum of revenue due to circumstances prevailing during the period under consideration.

**Please click sub link given in mail at point No. iv**

## 8. Remission or cessation of trading liabilities u/s 41(I)

As per the provisions of section 41(1) of the act, where any trading liability or expense incurred during any previous year by the assessee or its predecessor, stands reduced or any cash benefit received in such regards, due to remission or cessation during the year shall be taxable in such FY. The remission and cessation of any trading liability shall include unilateral act of the assessee where such liability is written off. Herein, issues involved is that department consider any liability remain outstanding for period beyond 3 years shall be deemed to be reversed being the creditor losses it right to claim such payment after expiry of three years from the date of such transaction under Limitation Act.

The assessee can furnish following submissions to make a *prima facie* case in its favour that provisions of section 41(1) is not attracted:

- ❑ Attach details regarding creditors outstanding beyond three years alongwith their PAN and Address, file copy of audited balance sheet indicating schedule wherein impugned outstanding balance have been reported and also obtain confirmation from such creditor.
- ❑ If payment have been made subsequently, attach relevant extract of bank statement indicating such payment.
- ❑ Refer decision of Hon'ble Apex Court in case of **CIT vs. Sugauli Sugar Works Pvt. Ltd. [1999] 102 Taxman 713 (SC)** where it was held that the principle that expiry of period of limitation prescribed under the Limitation Act cannot extinguish the debt but it will only prevent the creditor from enforcing the debt is well-settled.

**Please click sub link given in mail at point No. vi**

## 9. Disallowance of Cash Payment in excess of Rs. 10,000 u/s 40A(3)

As per the provisions of section 40A(3) of the act, aggregate of payment made to single person in a single day for any expenses in excess of Rs. 10,000/- shall be disallowed if such payment is made in cash or a bearer cheque/DD. In this regards, specific exemptions have been prescribed u/r 6DD of the rules. Some of the payments exempt from provisions of section 40A(3) are as under:

- payments made to specified organizations such as RBI, SBI, Co-operative Banks, Primary Credit Society, LIC, or
- Payment made through Letter of Credit, Bill of Exchange or through book entry, or
- Payment made to farmers, growers or producer of agricultural produce, fishery products, horticulture products, or produce of animal husbandry

The assessee can furnish following submissions to make a *prima facie* case in its favour that provisions of section 40A(3) is not attracted:

- ❑ Before filing cash book/ day book, ensure that no payments made in excess of Rs. 10,000/- in cash to single person in a single date.
- ❑ Attach copy of receipt vouchers obtained at the time of purchase from farmers etc. to substantiate payment to exempted person. Attach list of purchases with details of such specified persons including their address and supporting receipts of Mandi Tax paid in respect of such purchases.

**Please click sub link given in mail at point No. v**

## 10. Mismatch in Quantitative Details

In recent times, department is including queries regarding mismatch in quantitative details as per ITR of period under consideration and ITR of preceding year. In this regards, a stock item wise comparative detail of stock shall be filed with the department indicating quantity and amount disclosed in ITRs/ Audited Financial Statements/ Tax Audit Report for both years and an subjective explanation shall be filed explaining reason for change in manner of disclosure in current year financials. More or less, mismatch in quantitative detail between closing stock of preceding year and opening stack of current year may arise due to rearrangement or regrouping of different stock items in current year financial statements and the same can be explained through comparative chart indicating grouping of each stock item in both financials.

**Please click sub link given in mail at point No. xii**

# Reasons for selection of cases CASS

According to my experience of handling assessment and reassessment cases, following are the illustrative list of reasons for which cases are selected by CASS for scrutiny assessments:

1. Discrepancy in Stock Valuation – *From Quantitative details reported in ITR and Tax Audit report*
2. Expenditure of Personal Nature – *From STR reporting by Credit Card Companies or other entities where substantial payment discretionary expenses made but drawings reported in ITR is not in parity.*
3. Significant increase in amount of investments/ advances/ loans with no corresponding increase in profitability/ income.
4. Refund claimed in ITR is higher in ratio as compared to TDS deducted for the period.
5. Increase in unsecured loans in comparison to previous years.
6. Investment in immovable property with no or insignificant amount of capital gain tax paid in comparison to sales consideration received.

7. Verification of Duty Drawback received as shown in Export Import Data.
8. Substantial amount of deduction u/s 35(2AA), 35(2AB), 35CCC & 35CCD claimed in ITR.
9. Expenditure incurred for earning exempt income debited to P&L is not in parity with quantum of investments made for earning such exempt income.
10. Non-filing of ITR whereas TDS have been deducted u/s 194J in respect of receipts around minimum amount not chargeable to tax.
11. Difference in amount of disallowances in ITR as compared to Tax Audit Report.
12. Large amount of expenditure reported under head '*Expenses by way of penalty or fine or violation of any law for time being in force*'.

# Question and Answers

# THANK YOU..!!

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