ASSESSMENT PROCEDURE

LEARNING OUTCOMES

After studying this chapter, you would be able to

- appreciate when return filing becomes mandatory for different persons;
- identify and recall the due dates for filing of return in case of such persons;
- comprehend and apply the provisions relating to belated return, revised return and defective return;
- appreciate the statutory provisions relating to special audit directed by the Assessing Officer;
- appreciate the circumstances when the Assessing Officer can issue notice for reassessment of income and the time limit for issuance of such notice;
- know and recall the time limits for completion of assessments, including search assessments;
- appreciate the provisions for rectification of mistake apparent from the record.
17.1 RETURN OF INCOME

The Income-tax Act, 1961 contains provisions for filing of return of income. Return of income is the format in which the assessee furnishes information as to his total income and tax payable. The format for filing of returns by different assessees is notified by the CBDT. The particulars of income earned under different heads, gross total income, deductions from gross total income, total income and tax payable by the assessee are generally required to be furnished in a return of income. In short, a return of income is the declaration of income by the assessee in the prescribed format.

17.2 COMPULSORY FILING OF RETURN OF INCOME

[SECTION 139(1)]

(1) As per section 139(1), it is compulsory for companies and firms to file a return of income or loss for every previous year on or before the due date in the prescribed form.

(2) In case of a person other than a company or a firm, filing of return of income on or before the due date is mandatory, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeds the basic exemption limit.

(3) A return of income or loss for the previous year in the prescribed form and verified in the prescribed manner on or before the due date, has to be filed by every person, being a resident other than not ordinarily resident in India within the meaning of section 6(6), who is not required to furnish a return under section 139(1) if such person, at any time during the previous year –

(a) holds, as a beneficial owner or otherwise, any asset (including any financial interest in any entity) located outside India or has a signing authority in any account located outside India; or

(b) is a beneficiary of any asset (including any financial interest in any entity) located outside India.

However, an individual being a beneficiary of any asset (including any financial interest in any entity) located outside India would not be required to file return of income, where, income, if any, arising from such asset is includible in the income of the person referred to in (a) above in accordance with the provisions of the Income-tax Act, 1961.
Meaning of “beneficial owner” and “beneficiary” in respect of an asset for the purpose of section 139:

**Beneficial Owner**
An individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person.

**Beneficiary**
An individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person, other than such beneficiary.

Requirement of filing of return of income as per the fourth and fifth proviso to section 139(1)

A resident other than not ordinarily resident within the meaning of section 6(6)
Who is not required to furnish a return of income u/s 139/(1)
AND
Who at any time during the P.Y.

A
holds, as beneficial owner or otherwise, any asset (including financial interest in any entity) located outside

OR

B
has a signing authority in any account located outside India

is a beneficiary of any asset (including financial interest in any entity) located outside India

However, where any income arising from such asset is includible in the hands of the person specified in (A) in accordance with the provisions of the Act, an individual, being a beneficiary of such asset, is not required to file return of income.
(4) All such persons mentioned in (1), (2) & (3) above should, on or before the due date, furnish a return of his income or the income of such other person during the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.

(5) Further, every person, being an individual or a HUF or an AOP or BOI or an artificial juridical person -

− whose total income or the total income of any other person in respect of which he is assessable under this Act during the previous year
− without giving effect to the exemption provisions contained in sections 54/54B/54D/54EC/54F/54G/54GA/54GB in respect of capital gains or deductions under Chapter VI-A
− exceeds the basic exemption limit

is required to file a return of his income or income of such other person on or before the due date in the prescribed form and manner and setting forth the prescribed particulars.

For the A.Y.2020-21, the basic exemption limit is ₹ 2,50,000 for individuals/HUFs/AOPs/BOIs and artificial juridical persons, ₹ 3,00,000 for resident individuals of the age of 60 years or more but less than 80 years and ₹ 5,00,000 for resident individuals of the age of 80 years or more at any time during the previous year. These amounts denote the level of total income, which is arrived at after claiming exemption under sections 54/54B/54D/54EC/54F/54G/54GA/54GB in respect of capital gains and the admissible deductions under Chapter VI-A. However, the level of total income to be considered for the purpose of filing return of income is the income before claiming exemption under sections 54/54B/54D/54EC/54F/54G/54GA/54GB in respect of capital gains and the admissible deductions under Chapter VI-A.

(6) Any person other than a company or a firm, who is not required to furnish a return under section 139(1), would have to file income-tax return in the prescribed form and manner on or before the due date if, during the previous year, such person –

(a) has deposited an amount or aggregate of the amounts exceeding ₹ 1 crore in one or more current accounts maintained with a banking company or a co-operative bank; or

(b) has incurred expenditure of an amount or aggregate of the amounts exceeding ₹ 2 lakh for himself or any other person for travel to a foreign country; or

(c) has incurred expenditure of an amount or aggregate of the amounts exceeding ₹ 1 lakh towards consumption of electricity; or

(d) fulfils such other prescribed conditions
Meaning of due date: ‘Due date’ means -

<table>
<thead>
<tr>
<th>Assessee</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Where the assessee, other than an assessee referred to in clause (ii), is -</td>
<td></td>
</tr>
<tr>
<td>(a) a company,</td>
<td>30th September of the assessment year</td>
</tr>
<tr>
<td>(b) a person (other than a company) whose accounts are required to be audited under the Income-tax Act, 1961 or any other law in force; or</td>
<td></td>
</tr>
<tr>
<td>(c) a working partner of a firm whose accounts are required to be audited under the Income-tax Act, 1961 or any other law for the time being in force.</td>
<td></td>
</tr>
<tr>
<td>(ii) in the case of an assessee who is required to furnish a report referred to in section 92E.</td>
<td>30th November of the assessment year</td>
</tr>
<tr>
<td>(iii) in the case of any other assessee.</td>
<td>31st July of the assessment year</td>
</tr>
</tbody>
</table>

17.3 INTEREST FOR DEFAULT IN FURNISHING RETURN OF INCOME [SECTION 234A]

(1) Interest under section 234A is attracted for failure to file a return of income on or before the due date mentioned above i.e. interest is payable where an assessee furnishes the return of income after the due date or does not furnish the return of income.

(2) Simple interest @ 1% per month or part of the month is payable for the period commencing from the date immediately following the due date and ending on the following dates -

<table>
<thead>
<tr>
<th>Circumstances</th>
<th>Ending on the following dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where the return is furnished after due date</td>
<td>the date of furnishing of the return</td>
</tr>
<tr>
<td>Where no return is furnished</td>
<td>the date of completion of assessment</td>
</tr>
</tbody>
</table>

(3) The interest has to be calculated on the amount of tax on total income as determined under section 143(1) or on regular assessment as reduced by the advance tax paid and any tax deducted or collected at source, relief of tax allowed under section 89/90/90A/91, and tax credit allowed to be set-off in accordance with section 115JAA or 115JD.
17.4 OPTION TO FURNISH RETURN OF INCOME TO EMPLOYER [SECTION 139(1A)]

(1) This section gives an option to a person, being an individual who is in receipt of income chargeable under the head “Salaries”, to furnish a return of his income for any previous year to his employer, in accordance with such scheme as may be notified by the CBDT and subject to such conditions as may be specified therein.

(2) Such employer shall furnish all returns of income received by him on or before the due date, in such form (including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media) and manner as may be specified in that scheme.

(3) In such a case, any employee who has filed a return of his income to his employer shall be deemed to have furnished a return of income under sub-section (1).

17.5 SPECIFIED CLASS OR CLASSES OF PERSONS TO BE EXEMPTED FROM FILING RETURN OF INCOME [SECTION 139(1C)]

(1) Under section 139(1), every person has to furnish a return of his income on or before the due date, if his total income exceeds the basic exemption limit.

(2) For reducing the compliance burden of small taxpayers, the Central Government has been empowered to notify the class or classes of persons who will be exempted from the requirement of filing of return of income, subject to satisfying the prescribed conditions.

Accordingly, the Central Government has, vide Notification No. S.O.2672(E) dated 26.7.2019, exempted non-corporate non-residents and foreign companies, having any income chargeable under the Income-tax Act, 1961 during a previous year from any investment fund set up in an International Financial Services Centre (IFSC) located in India, from the requirement of furnishing a return of income under section 139(1) from A.Y.2019-20 onwards.

The exemption from filing return of income would be available to such class of persons only if any income-tax due on income of the said class of persons has been deducted at source and remitted to the Central Government by the investment fund at the tax-rate in force as per provisions of section 194LBB; and there is no other income during the previous year for which the said class of persons, is otherwise liable to file the tax-return.

Also, the exemption from the requirement of furnishing a return of income shall not be available to the said class of persons where a notice under section 142(1) or section 148 or section 153A or section 153C has been issued for filing a return of income for the assessment year specified therein.
For this purpose, “investment fund” means any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or Category II Alternative Investment Fund (AIF) and is regulated under the SEBI (AIF) Regulations, 2012 made under the SEBI Act, 1992.

(3) Every notification issued under section 139(1C) shall, as soon as may be after its issue, be laid before each House of Parliament while it is in session, for a total period of thirty days. If both Houses agree in making any modification in the notification, the notification will thereafter have effect only in such modified form. If both Houses agree that the notification should not be issued, the notification shall thereafter have no effect.

17.6 RETURN OF LOSS [SECTION 139(3)]

(1) This section requires the assessee to file a return of loss in the same manner as in the case of return of income within the time allowed under section 139(1).

(2) Section 80 requires mandatory filing of return of loss under section 139(3) on or before the due date specified under section 139(1) for carry forward of the following losses
(a) Business loss under section 72(1)
(b) Speculation business loss under section 73(2)
(c) Loss from specified business under section 73A(2)
(d) Loss under the head “Capital Gains” under section 74(1)
(e) Loss from the activity of owning and maintaining race horses under section 74A(3)

(3) Consequently, section 139(3) requires filing of return of loss mandatorily within the time allowed under section 139(1) for claiming carry forward of the losses mentioned in (2) above.

(4) However, loss under the head “Income from house property” under section 71B and unabsorbed depreciation under section 32 can be carried forward for set-off even though return of loss has not been filed before the due date.

(5) A return of loss has to be filed by the assessee in his own interest and the non-receipt of a notice from the Assessing Officer requiring him to file the return cannot be a valid excuse under any circumstances for the non-filing of such return.

17.7 BELATED RETURN [SECTION 139(4)]

(1) Any person who has not furnished a return within the time allowed to him under section 139(1) may furnish the return for any previous year at any time -

(i) before the end of the relevant assessment year; or
(ii) before the completion of the assessment, whichever is earlier.

(2) Thus, belated return can be filed only in case a person has not furnished his return within the time allowed under section 139(1). Also, the belated return cannot be furnished after the end of the relevant assessment year.

17.8 RETURN OF INCOME OF CHARITABLE TRUSTS AND INSTITUTIONS [SECTION 139(4A)]

(1) Every person in receipt of income -

(i) derived from property held under a trust or any other legal obligation wholly or partly for charitable or religious purpose; or

(ii) by way of voluntary contributions on behalf of such trust or institution

must furnish a return of income if the total income in respect of which he is assessable as a representative assessee (computed before allowing any exemption under sections 11 and 12) exceeds the basic exemption limit.

(2) Such persons should furnish the return in the prescribed form and verified in the prescribed manner containing all the particulars prescribed for this purpose.

(3) This return must be filed by the representative-assessee voluntarily within the time limit. Any failure on the part of the assessee would attract liability to pay interest and penalty.

17.9 RETURN OF INCOME OF POLITICAL PARTIES [SECTION 139(4B)]

(1) Under this section, a political party is required to file a return of income if, before claiming exemption under section 13A, the party has taxable income.

(2) The grant of exemption from income-tax to any political party under section 13A is subject to the condition that the political party submits a return of its total income within the time limit prescribed under section 139(1).

(3) The Chief Executive Officer of the political party is statutorily required to furnish a return of income of the party for the relevant assessment year, if the amount of total income of the previous year exceeds the basic exemption limit before claiming exemption under section 13A.

(4) The return must be filed in the prescribed form and verified in the prescribed manner setting forth such other particulars as may be prescribed by the CBDT.

(5) The provisions of the Act would apply as if it were a return required to be furnished under section 139(1).
### 17.10 MANDATORY FILING OF RETURNS BY SCIENTIFIC RESEARCH ASSOCIATIONS, NEWS AGENCY, TRADE UNIONS, ETC. [SECTION 139(4C)]

1. It will be mandatory for the following institutions/associations/persons etc. to file the return of income if their total income without giving effect to exemption under section 10, exceeds the basic exemption limit –

<table>
<thead>
<tr>
<th>Institution/Association etc.</th>
<th>Applicable section</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Research association</td>
<td>10(21)</td>
</tr>
<tr>
<td>(b) News agency</td>
<td>10(22B)</td>
</tr>
<tr>
<td>(c) Association or institution</td>
<td>10(23A)</td>
</tr>
<tr>
<td>(d) Fund for the welfare of employees or their dependents</td>
<td>10(23AAA)</td>
</tr>
<tr>
<td>(e) Institution</td>
<td>10(23B)</td>
</tr>
<tr>
<td>(f) Fund or institution</td>
<td>10(23C)(iv)</td>
</tr>
<tr>
<td>(g) Trust or institution</td>
<td>10(23C)(v)</td>
</tr>
<tr>
<td>(h) University or other educational institution</td>
<td>10(23C)(vi)/(iiiad)</td>
</tr>
<tr>
<td>(i) Hospital or other medical institution</td>
<td>10(23C)(via)/(iiiiae)</td>
</tr>
<tr>
<td>(j) Mutual Fund</td>
<td>10(23D)</td>
</tr>
<tr>
<td>(k) Securitisation Trust</td>
<td>10(23DA)</td>
</tr>
<tr>
<td>(l) Investor Protection Fund</td>
<td>10(23EC)/(ED)</td>
</tr>
<tr>
<td>(m) Core Settlement Guarantee Fund</td>
<td>10(23EE)</td>
</tr>
<tr>
<td>(n) Venture Capital Company/Venture Capital Fund</td>
<td>10(23FB)</td>
</tr>
<tr>
<td>(o) Trade Union</td>
<td>10(24)(b)</td>
</tr>
<tr>
<td>(p) Board or Authority as referred</td>
<td>10(29A)</td>
</tr>
<tr>
<td>(q) Body or Authority or Board or Trust</td>
<td>10(46)</td>
</tr>
<tr>
<td>(r) Infrastructure Debt Fund</td>
<td>10(47)</td>
</tr>
</tbody>
</table>

2. Such return of income should be in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.

3. Then, the provisions of the Act would apply as if it were a return required to be furnished under section 139(1).
17.11 MANDATORY FILING OF RETURNS BY UNIVERSITIES, COLLEGES ETC. [SECTION 139(4D)]

(1) It will be mandatory for every university, college or other institution referred to in clause (ii) and clause (iii) of section 35(1), which is not required to furnish its return of income or loss under any other provision of section 139, to furnish its return in respect of its income or loss in every previous year.

(2) All the provisions of the Income-tax Act, 1961 shall apply to such return as if it were a return under section 139(1).

17.12 FILING OF RETURN OF INCOME BY A BUSINESS TRUST [SECTION 139(4E)]

(1) Every business trust, which is not required to furnish return of income or loss under any other provision of this section, has to furnish the return of its income in respect of its income or loss in every previous year.

(2) All the provisions of the Income-tax Act, 1961 shall apply as if it were a return required to be filed under section 139(1).

17.13 FILING OF RETURN OF INCOME BY INVESTMENT FUND [SECTION 139(4F)]

(1) Every investment fund referred to in section 115UB, which is not required to furnish return of income or loss under any other provision of this section, shall furnish the return of income in respect of income or loss in every previous year.

(2) All the provisions of the Income-tax Act, 1961 shall apply as if it were a return required to be filed under section 139(1).

17.14 REVISED RETURN [SECTION 139(5)]

(1) If any person having furnished a return under section 139(1) or section 139(4), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the end of the relevant assessment year or before completion of assessment, whichever is earlier.

(2) The return can be revised for any number of times within the given time limit. In this case the latest revised return filed replaces all other returns filed earlier.
17.15 PARTICULARS TO BE FURNISHED WITH THE RETURN [SECTION 139(6)]

The prescribed form of the return shall, in certain specified cases, require the assessee to furnish the particulars of -

1. income exempt from tax
2. assets of the prescribed nature and value, held by him as a beneficial owner or otherwise or in which he is a beneficiary.
3. his bank account and credit card held by him
4. expenditure exceeding the prescribed limits incurred by him under prescribed heads
5. such other outgoings as may be prescribed.

17.16 PARTICULARS TO BE FURNISHED WITH RETURN OF INCOME IN THE CASE OF AN ASSESSEE ENGAGED IN BUSINESS OR PROFESSION [SECTION 139(6A)]

The prescribed form of the return shall, in the case of an assessee engaged in any business or profession also require him to furnish -

1. the report of any audit referred to in section 44AB.
2. the particulars of the location and style of the principal place where he carries on the business or profession and all the branches thereof.
3. the names and addresses of his partners, if any, in such business or profession.
4. if he is a member of an association or body of individuals,
   (a) the names of the other members of the association or the body of individuals; and
   (b) the extent of the share of the assessee and the shares of all such partners or members, as the case may be, in the profits of the business or profession.

17.17 DEFECTIVE RETURN [SECTION 139(9)]

1. Under this sub-section, the Assessing Officer has the power to call upon the assessee to rectify a defective return.

2. Where the Assessing Officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of 15 days from the date of such intimation. The Assessing Officer has the discretion to extend the time period beyond 15 days, on an application made by the assessee.
(3) If the defect is not rectified within the period of 15 days or such further extended period, then the return would be treated as an invalid return. The consequential effect would be the same as if the assessee had failed to furnish the return.

(4) Where, however, the assessee rectifies the defect after the expiry of the period of 15 days or the further extended period, but before assessment is made, the Assessing Officer can condone the delay and treat the return as a valid return.

(5) A return of income shall be regarded as defective unless all the following conditions are fulfilled, namely:

(i) The annexures, statements and columns in the return of income relating to computation of income chargeable under each head of income, computations of gross total income and total income have been duly filled in.

(ii) The return of income is accompanied by the following, namely:

(a) a statement showing the computation of the tax payable on the basis of the return.

(b) the report of the audit obtained under section 44AB (If such report has been furnished prior to furnishing the return of income, a copy of such report and the proof of furnishing the report should be attached).

(c) the proof regarding the tax, if any, claimed to have been deducted or collected at source and the advance tax and tax on self-assessment, if any, claimed to have been paid. (However, the return will not be regarded as defective if (a) a certificate for tax deducted or collected was not furnished under section 203 or section 206C to the person furnishing his return of income, (b) such certificate is produced within a period of 2 years).

(d) the proof of the amount of compulsory deposit, if any, claimed to have been paid under the Compulsory Deposit Scheme (Income-tax Payers) Act, 1974;

(iii) Where regular books of account are maintained by an assessee, the return of income is accompanied by the following -

(a) copies of manufacturing account, trading account, profit and loss account or income and expenditure account, or any other similar account and balance sheet;

(b) the personal accounts as detailed below -

<table>
<thead>
<tr>
<th>(1)</th>
<th>Proprietary business or profession</th>
<th>The personal account of the proprietor</th>
</tr>
</thead>
<tbody>
<tr>
<td>(2)</td>
<td>Firm, association of persons or body of individuals</td>
<td>personal accounts of partners or members</td>
</tr>
</tbody>
</table>
(iv) Where the accounts of the assessee have been audited, the return should be accompanied by copies of the audited profit and loss account and balance sheet and the auditor's report.

(v) Where the cost accounts of an assessee have been audited under section 233B¹ of Companies Act, 1956, the return should be accompanied by such report.

(vi) Where regular books of account are not maintained by the assessee, the return should be accompanied by -

   (a) a statement indicating the amount of turnover or gross receipts, gross profit, expenses and net profit of the business or profession;

   (b) the basis on which such amounts mentioned in (1) above have been computed,

   (c) the amounts of total sundry debtors, sundry creditors, stock-in-trade and cash balance as at the end of the previous year.

It may be noted that a return which is otherwise valid would not be treated as defective merely because self-assessment tax and interest payable in accordance with the provisions of section 140A has not been paid on or before the date of furnishing the return.

Notes:

(i) Many of these particulars are now required to be incorporated as part of the relevant return form, for example, details of tax deducted at source, advance tax paid, self-assessment tax paid, amount of turnover/gross receipts etc.

(ii) Section 292B provides that no return of income, order of assessment, notice, summons or other proceedings furnished or made or taken or purported to have been furnished or made in pursuance of any of the provisions of the Income-tax Act, 1961 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 they are in substance and effect in conformity with or according to the intent and purposes of the Income-tax Act, 1961. The provision, thus, enables tax authorities to accept returns and other documents and tax payers to accept orders, notice, etc., received from tax authorities even in cases where there are a few typographical, arithmetical or other mistakes which do not materially affect the objects with which the document was submitted by the assessee or order was issued by the department.

¹ Section 148 of the Companies Act, 2013
### 17.18 PERMANENT ACCOUNT NUMBER (PAN)

#### [SECTION 139A]

(1) Section 139A(1) requires the following persons mentioned in column (2), who have not been allotted a permanent account number (PAN), to apply to the Assessing Officer within the time specified in column (3) for the allotment of a PAN –

<table>
<thead>
<tr>
<th></th>
<th>Persons required to apply for PAN</th>
<th>Time limit for making such application</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>Every person, if his total income or the total income of any other person in respect of which he is assessable under the Act during any previous year exceeds the maximum amount which is not chargeable to income-tax</td>
<td>On or before 31st May of the assessment year for which such income is assessable</td>
</tr>
<tr>
<td>(ii)</td>
<td>Every person carrying on any business or profession whose total sales, turnover or gross receipts are or is likely to exceed ₹ 5 lakhs in any previous year</td>
<td>Before the end of that financial year (previous year).</td>
</tr>
<tr>
<td>(iii)</td>
<td>Every person who is required to furnish a return of income under section 139(4A)</td>
<td>Before the end of the financial year</td>
</tr>
<tr>
<td>(iv)</td>
<td>Every person being a resident, other than an individual, which enters into a financial transaction of an amount aggregating to ₹ 2,50,000 or more in a financial year</td>
<td>On or before 31st May of the immediately following financial year</td>
</tr>
<tr>
<td>(v)</td>
<td>Every person who is a managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of any person referred in (iv) above or any person competent to act on behalf of such person referred in (iv) above</td>
<td>On or before 31st May of the immediately following financial year in which the person referred in (iv) enters into financial transaction specified therein.</td>
</tr>
</tbody>
</table>

*Further, for widening the tax base, every person who has not been allotted a PAN and intends to enter into such transaction as prescribed by the CBDT is also required to apply to the Assessing Officer for allotment of PAN (inserted w.e.f. 1.9.2019)*

(2) The Central Government is empowered to specify, by notification in the Official Gazette, any class or classes of persons by whom tax is payable under the Act or any tax or duty is payable under any other law for the time being in force. Such persons are required to apply within such time as may be mentioned in that notification to the Assessing Officer for the allotment of a PAN [Sub-section (1A)].
For the purpose of collecting any information which may be useful for or relevant to the purposes of the Act, the Central Government may notify any class or classes of persons, and such persons shall within the prescribed time, apply to the Assessing Officer for allotment of a PAN [Sub-section (1B)].

The Assessing Officer, having regard to the nature of transactions as may be prescribed, may also allot a PAN to any other person (whether any tax is payable by him or not) in the manner and in accordance with the procedure as may be prescribed [Sub-section (2)].

Any person, other than the persons mentioned in (1) to (4) above, may apply to the Assessing Officer for the allotment of a PAN and the Assessing Officer shall allot a PAN to such person immediately.

Such PAN comprises of 10 alphanumeric characters.

Quoting of PAN is mandatory in all documents pertaining to the following prescribed transactions:

(a) in all returns to, or correspondence with, any income-tax authority;
(b) in all challans for the payment of any sum due under the Act;
(c) in all documents pertaining to such transactions entered into by him, as may be prescribed by the CBDT in the interests of revenue. In this connection, CBDT has notified the following transactions, namely:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Nature of transaction</th>
<th>Value of transaction</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Sale or purchase of a motor vehicle or vehicle, as defined in the Motor Vehicles Act, 1988 which requires registration by a registering authority under that Act, other than two wheeled vehicles.</td>
<td>All such transactions</td>
</tr>
<tr>
<td>2.</td>
<td>Opening an account [other than a time-deposit referred to at Sl. No.12 and a Basic Savings Bank Deposit Account] with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act).</td>
<td>All such transactions</td>
</tr>
<tr>
<td>3.</td>
<td>Making an application to any banking company or a co-operative bank to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act) or to any other company or institution, for issue of a credit or debit card.</td>
<td>All such transactions</td>
</tr>
<tr>
<td>4.</td>
<td>Opening of a demat account with a depository, participant, custodian of securities or any other person registered under section 12(1A) of the SEBI Act, 1992.</td>
<td>All such transactions</td>
</tr>
<tr>
<td></td>
<td>Description</td>
<td>Conditions</td>
</tr>
<tr>
<td>---</td>
<td>-----------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>5.</td>
<td>Payment to a hotel or restaurant against a bill or bills at any one time.</td>
<td>Payment in cash of an amount exceeding ₹ 50,000.</td>
</tr>
<tr>
<td>6.</td>
<td>Payment in connection with travel to any foreign country or payment for purchase of any foreign currency at any one time.</td>
<td>Payment in cash of an amount exceeding ₹ 50,000.</td>
</tr>
<tr>
<td>7.</td>
<td>Payment to a Mutual Fund for purchase of its units</td>
<td>Amount exceeding ₹ 50,000.</td>
</tr>
<tr>
<td>8.</td>
<td>Payment to a company or an institution for acquiring debentures or bonds issued by it.</td>
<td>Amount exceeding ₹ 50,000.</td>
</tr>
<tr>
<td>9.</td>
<td>Payment to the Reserve Bank of India for acquiring bonds issued by it.</td>
<td>Amount exceeding ₹ 50,000.</td>
</tr>
<tr>
<td>10.</td>
<td>Deposit with a banking company or a co-operative bank to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act); or post office</td>
<td>Cash deposits exceeding ₹ 50,000 during any one day.</td>
</tr>
<tr>
<td>11.</td>
<td>Purchase of bank drafts or pay orders or banker’s cheques from a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act).</td>
<td>Payment in cash of an amount exceeding ₹ 50,000 during any one day.</td>
</tr>
<tr>
<td>12.</td>
<td>A time deposit with, (i) a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act); (ii) a Post Office; (iii) a Nidhi referred to in section 406 of the Companies Act, 2013; or (iv) a non-banking financial company which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934, to hold or accept deposit from public.</td>
<td>Amount exceeding ₹ 50,000 or aggregating to more than ₹ 5 lakh during a financial year.</td>
</tr>
<tr>
<td>13.</td>
<td>Payment for one or more pre-paid payment instruments, as defined in the policy guidelines for issuance and operation of pre-paid payment instruments issued by Reserve Bank of India under the Payment and Settlement Systems Act, 2007, to a banking company or a co-operative bank to which the Banking Regulation Act, 1949,</td>
<td>Payment in cash or by way of a bank draft or pay order or banker’s cheque of an amount aggregating to more than ₹ 50,000 in a financial year.</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>Description</td>
<td>Threshold</td>
</tr>
<tr>
<td>--------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>14.</td>
<td>Payment as life insurance premium to an insurer as defined in the Insurance Act, 1938.</td>
<td>Amount aggregating to more than ₹ 50,000 in a financial year.</td>
</tr>
<tr>
<td>15.</td>
<td>A contract for sale or purchase of securities (other than shares) as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956.</td>
<td>Amount exceeding ₹ 1 lakh per transaction</td>
</tr>
<tr>
<td>16.</td>
<td>Sale or purchase, by any person, of shares of a company not listed in a recognised stock exchange.</td>
<td>Amount exceeding ₹ 1 lakh per transaction</td>
</tr>
<tr>
<td>17.</td>
<td>Sale or purchase of any immovable property.</td>
<td>Amount exceeding ₹ 10 lakh or valued by stamp valuation authority referred to in section 50C at an amount exceeding ₹ 10 lakh</td>
</tr>
<tr>
<td>18.</td>
<td>Sale or purchase, by any person, of goods or services of any nature other than those specified at Sl. No. 1 to 17 of this Table, if any.</td>
<td>Amount exceeding ₹ 2 lakh per transaction:</td>
</tr>
</tbody>
</table>

**Minor to quote PAN of parent or guardian**

Where a person, entering into any transaction referred to in this rule, is a minor and who does not have any income chargeable to income-tax, he shall quote the PAN of his father or mother or guardian, as the case may be, in the document pertaining to the said transaction.

**Declaration by a person not having PAN**

Further, any person who does not have a PAN and who enters into any transaction specified in this rule, shall make a declaration in Form No.60 giving therein the particulars of such transaction either in paper form or electronically under the electronic verification code in accordance with the procedures, data structures, and standards specified by the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems).

**Non-applicability of Rule 114B**

Also, the provisions of this rule shall not apply to the following class or classes of persons, namely:-

(i) the Central Government, the State Governments and the Consular Offices;

(ii) the non-residents referred to in section 2(30) in respect of the transactions other than a transaction referred to at Sl. No. 1 or 2 or 4 or 7 or 8 or 10 or 12 or 14 or 15 or 16 or 17 of the Table.
### Meaning of certain phrases:

<table>
<thead>
<tr>
<th>Phrase</th>
<th>Inclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)  Payment in connection with travel</td>
<td>Payment towards fare, or to a travel agent or a tour operator, or to an authorized person as defined in section 2(c) of the Foreign Exchange Management Act, 1999</td>
</tr>
<tr>
<td>(ii) Travel agent or tour operator</td>
<td>A person who makes arrangements for air, surface or maritime travel or provides services relating to accommodation, tours, entertainment, passport, visa, foreign exchange, travel related insurance or other travel related services either severally or in package</td>
</tr>
<tr>
<td>(iii) Time deposit</td>
<td>Any deposit which is repayable on the expiry of a fixed period.</td>
</tr>
</tbody>
</table>

(8) Every person who receives any document relating to any transaction cited above shall ensure that the PAN is duly quoted in the document.

(9) If there is a change in the address or in the name and nature of the business of a person, on the basis of which PAN was allotted to him, he should intimate such change to the Assessing Officer.

(10) **Intimation of PAN to person deducting tax at source**

Every person who receives any amount from which tax has been deducted at source shall intimate his PAN to the person responsible for deducting such tax [Sub-section (5A)]. Such person has to be make an application of PAN before the end of such financial year.

(11) **Quoting of PAN in certain documents**

Where any amount has been paid after deducting tax at source, the person deducting tax shall quote the PAN of the person to whom the amount was paid in the following documents:

(i) in the statement furnished under section 192(2C) giving particulars of perquisites or profits in lieu of salary provided to any employee;

(ii) in all certificates for tax deducted issued to the person to whom payment is made;

(iii) in all returns made to the prescribed income-tax authority under section 206;

(iv) in all statements prepared and delivered or caused to be delivered in accordance with the provisions of section 200(3)[Sub-section (5B)].

(12) **Requirement to intimate PAN and quote PAN not to apply to certain persons**

The above sub-sections (5A) and (5B) shall not apply to a person who –

(i) does not have taxable income or

(ii) who is not required to obtain PAN
if such person furnishes a declaration under section 197A in the prescribed form and manner that the tax on his estimated total income for that previous year will be nil.

(13) **Intimation of PAN to person collecting tax at source**

Likewise, every buyer or licensee or lessee referred to in section 206C shall intimate his PAN to the person responsible for collecting tax.

(14) **Quoting of PAN in certain documents**

Every person collecting tax in accordance with section 206C shall quote PAN of every buyer or licensee or lessee referred to therein –

(i) in all certificates furnished in accordance with the provisions of section 206C(5);

(ii) in all returns prepared and delivered or caused to be delivered in accordance with the provisions of section 206C(5A) or section 206C(5B) to an income-tax authority;

(iii) in all statements prepared and delivered or caused to be delivered in accordance with the provisions of section 206C(3).

(15) **Inter-changeability of PAN with the Aadhaar number**

Every person who is required to furnish or intimate or quote his PAN may furnish or intimate or quote his Aadhaar Number in lieu of the PAN w.e.f. 1.9.2019 if he

- has not been allotted a PAN but possesses the Aadhaar number
- has been allotted a PAN and has intimated his Aadhaar number to prescribed authority in accordance with the requirement contained in section 139AA(2) [Sub-section (5E)]

PAN would be allotted in prescribed manner to a person who has not been allotted a PAN but possesses Aadhaar number.

**Note** – Rule 114(4) requires submission of application for allotment of PAN by the applicant in the prescribed form accompanied by the prescribed documents as proof of identity, address and date of birth of such applicant. Sub-rule (1A) has been inserted in Rule 114 w.e.f. 1.9.2019 to provide that any person, who has not been allotted a PAN but possesses the Aadhaar number and has furnished or intimated or quoted his Aadhaar number in lieu of the PAN in accordance with section 139A(5E), shall be deemed to have applied for allotment of PAN and he shall not be required to apply or submit any documents under Rule 114.

Further, sub-rule (1B) has been inserted in Rule 114 w.e.f. 1.9.2019 to provide that any person, who has not been allotted a PAN but possesses the Aadhaar number may apply for allotment of the PAN under section 139A(1)/(1A)/(3) by intimating his Aadhaar number and he shall not be required to apply or submit any documents under Rule 114.

(16) **Quoting and authentication of PAN or Aadhaar number**

(a) Every person entering into such prescribed transactions is required to quote his PAN
or Aadhaar number, as the case may be, in the documents pertaining to such transactions. Such persons are also required to authenticate such PAN or Aadhaar number in the prescribed manner [Sub-section (6A), inserted w.e.f. 1.9.2019].

(b) Every person receiving such document relating to transactions referred to in (a) has to ensure that PAN or Aadhaar number has been duly quoted in such document. They also have to ensure that such PAN or Aadhaar number is so authenticated [Sub-section (6B), inserted w.e.f. 1.9.2019].

(17) Meaning of certain terms for the purpose of section 139A

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Aadhaar Number</td>
<td>An identification number issued to an individual under section 3(3) of Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 by the Unique Identification Authority of India, after verification of the demographic information and biometric information submitted by the individual.</td>
</tr>
<tr>
<td>(ii) Assessing Officer</td>
<td>Includes an income-tax authority who is assigned the duty of allotting PANs.</td>
</tr>
</tbody>
</table>
| (iii) Authentication        | The process by which –  
(i) the PAN or Aadhaar number along with demographic information or biometric information of an individual is submitted to the income-tax authority or such other prescribed authority or agency for its verification; and  
(ii) Such authority or agency verifies the correctness or the lack thereof, on the basis of the information available with it. |
| (iv) Permanent Account Number (PAN) | A number which the Assessing Officer may allot to any person for the purpose of identification and includes a PAN allotted under the new series i.e., PAN having 10 alphanumeric characters. |

(18) Penalty for failure to comply with the provisions of section 139A [Section 272B]

<table>
<thead>
<tr>
<th>Section</th>
<th>Default</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>272B(1)</td>
<td>Failure to comply with the provisions of section 139A</td>
<td>₹ 10,000</td>
</tr>
<tr>
<td>272B(2)</td>
<td>Failure to quote PAN/Aadhaar number in any document referred to in section 139A(5)(c)</td>
<td>₹ 10,000 for each such default</td>
</tr>
<tr>
<td></td>
<td>Failure to intimate PAN/Aadhaar number as required by section 139A(5A)/(5C)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Knowingly quoting or intimating a number which is false</td>
<td></td>
</tr>
<tr>
<td>272B(2A)</td>
<td>Failure to quote PAN/Aadhaar Number in documents referred to in section 139A(6A) or authenticate such number in accordance with the provisions contained therein</td>
<td>₹ 10,000 for each such default</td>
</tr>
</tbody>
</table>
272B(2B) inserted w.e.f. 1.9.2019

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>Failure to ensure that PAN/Aadhaar Number is duly quoted in the documents relating to transactions referred to in section 139A(5)(c) or section 139A(6A)</td>
</tr>
<tr>
<td></td>
<td>₹10,000 for each such default</td>
</tr>
<tr>
<td>(ii)</td>
<td>Failure to ensure that PAN/Aadhaar Number has been duly authenticated in respect of transactions referred to under section 139A(6A)</td>
</tr>
</tbody>
</table>

Note – It is necessary to give an opportunity to be heard to the person on whom the penalty under section 272B is proposed to be imposed.

### 17.19 QUOTING OF AADHAAR NUMBER [SECTION 139AA]

1. **Mandatory quoting of Aadhar Number**
   
   Every person who is eligible to obtain Aadhar Number is required to mandatorily quote Aadhaar Number, on or after 1st July, 2017:
   
   (a) in the application form for allotment of Permanent Account Number (PAN)
   
   (b) in the return of income

2. **Mandatory quoting of Enrolment Id, where person does not have Aadhaar Number**
   
   If a person does not have Aadhaar Number, he is required to quote Enrolment ID of Aadhaar application form issued to him at the time of enrolment in the application form for allotment of Permanent Account Number (PAN) or in the return of income furnished by him.

   Enrolment ID means a 28 digit Enrolment Identification Number issued to a resident at the time of enrolment

3. **Intimation of Aadhaar Number to prescribed Authority**
   
   Every person who has been allotted Permanent Account Number (PAN) as on 1st July, 2017, and who is eligible to obtain Aadhar Number, shall intimate his Aadhar Number to the Principal Director General of Income-tax (Systems) or Principal Director of Income-tax (Systems) on or before 31st December, 2019.

   Notwithstanding the last date of intimating/linking of Aadhaar Number with PAN being 31.12.2019, it is clarified w.e.f. 01.04.2019, it is mandatory to quote and link Aadhaar number while filing the return of income, either manually or electronically, unless specifically exempted in cases referred to in para (5) below.

4. **Consequences of failure to intimate Aadhar Number**
   
   If a person fails to intimate the Aadhar Number, the Permanent Account Number (PAN) allotted to such person shall be **made inoperative after the date so notified in the prescribed manner.**
Note - To give effect to the Supreme Court ruling on Aadhar Card linkage, the CBDT vide Press Release dated 10th June 2017, clarified that in consequence of failure to intimate Aadhar Number, the permanent account number (PAN) of those who do not have Aadhaar and who do not wish to obtain Aadhaar for the time being, will not be cancelled so that other consequences under the Income-tax Act for failing to quote PAN may not arise. This clarification was consequent to the position of law prior to 1.9.2019 deeming the PAN to be invalid if a person failed to intimate the Aadhaar Number and providing that other provisions of the Income-tax Act, 1961 would apply as if the person had not applied for PAN.

(5) Provision not to apply to certain person or class of persons

The provisions of section 139AA relating to quoting of Aadhar Number would, however, not apply to such person or class or classes of persons or any State or part of any State as may be notified by the Central Government.

Accordingly, the Central Government has, vide Notification No. 37/2017 dated 11.05.2017 effective from 01.07.2017, notified that the provisions of section 139AA relating to quoting of Aadhar Number would not apply to an individual who does not possess the Aadhar number or Enrolment ID and is:

(i) residing in the States of Assam, Jammu & Kashmir and Meghalaya;
(ii) a non-resident as per Income-tax Act, 1961;
(iii) of the age of 80 years or more at any time during the previous year;
(iv) not a citizen of India

17.20 SCHEME FOR SUBMISSION OF RETURNS THROUGH TAX RETURN PREPARERS [SECTION 139B]

(1) This section provides that, for the purpose of enabling any specified class or classes of persons to prepare and furnish their returns of income, the CBDT may notify a Scheme to provide that such persons may furnish their returns of income through a Tax Return Preparer authorised to act as such under the Scheme.

(2) The Tax Return Preparer shall assist the persons furnishing the return in a manner that will be specified in the Scheme, and shall also affix his signature on such return.

(3) A Tax Return Preparer can be an individual, other than

(i) any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealings.
(ii) any legal practitioner who is entitled to practice in any civil court in India.
(iii) a chartered accountant.
(iv) an employee of the ‘specified class or classes of persons’.

(4) The “specified class or classes of persons” for this purpose means any person other than a company or a person whose accounts are required to be audited under section 44AB (tax audit) or under any other existing law, who is required to furnish a return of income under the Income-tax Act, 1961.

(5) The Scheme notified under the said section may provide for the following -

(i) the manner in which and the period for which the Tax Return Preparers shall be authorised,

(ii) the educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Tax Return Preparer,

(iii) the code of conduct for the Tax Return Preparers,

(iv) the duties and obligations of the Tax Return Preparers,

(v) the circumstances under which the authorisation given to a Tax Return Preparer may be withdrawn, and

(vi) any other relevant matter as may be specified by the Scheme.

(6) Accordingly, the CBDT has, in exercise of the powers conferred by this section, framed the Tax Return Preparer Scheme, 2006, which came into force from 1.12.2006.

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Contents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicability of the scheme</td>
<td>The scheme is applicable to all eligible persons.</td>
</tr>
<tr>
<td>Eligible person</td>
<td>Any person being an individual or a Hindu undivided family.</td>
</tr>
<tr>
<td>Tax Return Preparer</td>
<td>Any individual who has been issued a &quot;Tax Return Preparer Certificate&quot; and a &quot;unique identification number&quot; under this Scheme by the Partner Organisation to carry on the profession of preparing the returns of income in accordance with the Scheme. However, the following person are not entitled to act as Tax Return Preparer: (i) any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealings. (ii) any legal practitioner who is entitled to practice in any civil court in India. (iii) an accountant.</td>
</tr>
<tr>
<td>Educational qualification for Tax</td>
<td>An individual, who holds a bachelor degree from a recognised Indian University or institution, or has passed the intermediate</td>
</tr>
<tr>
<td>Return Preparers</td>
<td>level examination conducted by the Institute of Chartered Accountants of India or the Institute of Company Secretaries of India or the Institute of Cost Accountants of India, shall be eligible to act as Tax Return Preparer.</td>
</tr>
<tr>
<td>------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| Preparation of and furnishing the Return of Income by the Tax Return Preparer | An eligible person may, at his option, furnish his return of income under section 139 for any assessment year after getting it prepared through a Tax Return Preparer:  
However, the following eligible person (an individual or a HUF) cannot furnish a return of income for an assessment year through a Tax Return Preparer:  
(i) who is carrying out business or profession during the previous year and accounts of the business or profession for that previous year are required to be audited under section 44AB or under any other law for the time being in force; or  
(ii) who is not a resident in India during the previous year.  
An eligible person cannot furnish a revised return of income for any assessment year through a Tax Return Preparer unless he has furnished the original return of income for that assessment year through such or any other Tax Return Preparer. |

**Note** - It may be noted that as per section 139B(3), an employee of the "specified class or classes of persons" is not authorized to act as a Tax Return Preparer. Therefore, it follows that employees of companies and persons whose accounts are required to be audited under section 44AB or any other law for the time being in force (since they are not falling in the category of specified class or classes of persons), are eligible to act as Tax Return Preparers.

### 17.21 POWER OF CBDT TO DISPENSE WITH FURNISHING DOCUMENTS ETC. WITH THE RETURN AND FILING OF RETURN IN ELECTRONIC FORM [SECTIONS 139C & 139D]

1. Section 139C provides that the CBDT may make rules providing for a class or classes of persons who may not be required to furnish documents, statements, receipts, certificate, reports of audit or any other documents, which are otherwise required to be furnished along with the return under any other provisions of this Act.

2. However, on demand, the said documents, statements, receipts, certificate, reports of audit or any other documents have to be produced before the Assessing Officer.
Section 139D empowers the CBDT to make rules providing for –
(a) the class or classes of persons who shall be required to furnish the return of income in electronic form;
(b) the form and the manner in which the return of income in electronic form may be furnished;
(c) the documents, statements, receipts, certificates or audited reports which may not be furnished along with the return of income in electronic form but have to be produced before the Assessing Officer on demand;
(d) the computer resource or the electronic record to which the return of income in electronic form may be transmitted.

17.22 PERSONS AUTHORISED TO VERIFY RETURN OF INCOME [SECTION 140]

This section specifies the persons who are authorized to verify the return of income under section 139 of the Act.

<table>
<thead>
<tr>
<th>Assessee</th>
<th>Circumstance</th>
<th>Authorised Persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Individual</td>
<td>(i) In circumstances not covered under (ii), (iii) &amp; (iv) below</td>
<td>- the individual himself</td>
</tr>
<tr>
<td></td>
<td>(ii) where he is absent from India</td>
<td>- the individual himself; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- any person duly authorised by him in this behalf holding a valid power of attorney from the individual (Such power of attorney should be attached to the return of income)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- his guardian; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- any other person competent to act on his behalf</td>
</tr>
<tr>
<td></td>
<td>(iii) Where he is mentally incapacitated from attending to his affairs</td>
<td>- any person duly authorised by him in this behalf holding a valid power of attorney from the individual (Such power of attorney should be attached to the return of income)</td>
</tr>
<tr>
<td></td>
<td>(iv) where, for any other reason, it is not possible for the individual to verify the return</td>
<td></td>
</tr>
<tr>
<td>2. Hindu Undivided Family</td>
<td>(i) in circumstances not covered under (ii) and (iii) below</td>
<td>- the karta</td>
</tr>
<tr>
<td></td>
<td>(ii) where the karta is absent from India</td>
<td>- any other adult member of the HUF</td>
</tr>
<tr>
<td></td>
<td>(iii) where the karta is mentally incapacitated from attending to his affairs</td>
<td>- any other adult member of the HUF</td>
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<tr>
<td>---</td>
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</tr>
<tr>
<td>3.</td>
<td>Company</td>
<td>(i) in circumstances not covered under (ii) to (vi) below</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(ii) (a) where for any unavoidable reason such managing director is not able to verify the return; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) where there is no managing director</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(iii) Where the company is not resident in India</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(iv) (a) Where the company is being wound up (whether under the orders of a court or otherwise); or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) where any person has been appointed as the receiver of any assets of the company</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(v) Where the management of the company has been taken over by the Central Government or any State Government under any law</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(vi) Where an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016.</td>
</tr>
</tbody>
</table>

| 4. | Firm | (i) in circumstances not covered under (ii) below | the managing partner of the firm |
|   |   | (ii) (a) where for any unavoidable reason such managing partner is not able to verify the return; or | any partner of the firm, not being a minor |
|   |   | (b) where there is no managing partner. | any partner of the firm, not being a minor |

<p>| 5. | LLP | (i) in circumstances not covered under (ii) below | Designated partner |
|   |   | (ii) (a) where for any unavoidable | any partner of the LLP |</p>
<table>
<thead>
<tr>
<th></th>
<th>reason such designated partner is not able to verify the return; or where there is no designated partner.</th>
<th>any partner of the LLP</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.</td>
<td>Local authority</td>
<td>-</td>
</tr>
<tr>
<td>7.</td>
<td>Political party [referred to in section 139(4B)]</td>
<td>-</td>
</tr>
<tr>
<td>8.</td>
<td>Any other association</td>
<td>-</td>
</tr>
<tr>
<td>9.</td>
<td>Any other person</td>
<td>-</td>
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</tbody>
</table>

### 17.23 SELF ASSESSMENT [SECTION 140A]

(1) **Payment of tax, interest and fee before furnishing return of income**

Where any tax is payable on the basis of any return required to be furnished under, *inter alia*, section 139, after taking into account -

(i) the amount of tax, already paid, under any provision of the Income-tax Act, 1961

(ii) any tax deducted or collected at source;

(iii) any relief of tax claimed under section 89;

(iv) relief of tax claimed under section 90 or 90A;

(v) deduction of tax claimed under section 91;

(vi) any tax credit claimed to be set-off in accordance with the provisions of section 115JAA or section 115JD.

the assessee shall be liable to pay such tax together with interest and fee payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax before furnishing the return. The return shall be accompanied by the proof of payment of such tax, interest and fee.

(2) **Order of adjustment of amount paid by the assessee**

Where the amount paid by the assessee under section 140A(1) falls short of the aggregate of the tax, interest and fee as aforesaid, the amount so paid shall first be adjusted towards
the fee payable and thereafter towards interest and the balance, if any, shall be adjusted towards the tax payable.

(3) **Interest under section 234A**

For the above purpose, interest payable under section 234A shall be computed on the amount of tax on the total income as declared in the return, as reduced by the amount of:

(i) advance tax paid, if any;
(ii) any tax deducted or collected at source;
(iii) **any relief of tax claimed under section 89**;
(iv) relief of tax claimed under section 90 or 90A;
(v) deduction of tax claimed under section 91;
(vi) any tax credit claimed to be set-off in accordance with the provisions of section 115JAA or section 115JD.

(4) **Interest under section 234B**

Interest payable under section 234B shall be computed on the assessed tax or on the amount by which the advance tax paid falls short of the assessed tax.

For this purpose, “assessed tax” means the tax on total income declared in the return as reduced by –

(i) the amount of tax deducted or collected at source;
(ii) **any relief of tax claimed under section 89**;
(iii) relief of tax claimed under section 90 or 90A
(iv) deduction of tax claimed under section 91
(v) any tax credit claimed to be set-off in accordance with the provisions of section 115JAA or section 115JD [Sub-section (1B)].

(5) **Self-assessment tax deemed to have been paid towards regular assessment or assessment under section 153A**

After regular assessment under section 143 or section 144 or an assessment under section 153A has been made, any amount paid under section 140A shall be deemed to have been paid towards such regular assessment or assessment.

(6) **Consequence of failure to pay tax, interest or fee**

If any assessee fails to pay the whole or any part of such of tax or interest or fees, he shall be deemed to be an assessee in default in respect of such tax or interest or fees remaining unpaid and all the provisions of this Act shall apply accordingly.
17.24 INQUIRY BEFORE ASSESSMENT [SECTION 142]

For the purpose of making an assessment, the Assessing Officer may serve on any person who has made a return under section 139 or in whose case the time allowed under section 139(1) for furnishing the return has expired, a notice under section 142. The purposes for which such notice can be served are depicted in the diagram in the next page:

**Note** - It may be noted that the time-limit for completion of assessment under section 153(1) is 21 months/18 months/12 months, as the case may be, from the end of the assessment year in which the income was first assessable. Therefore, since assessment has to be completed within the said period, it appears that notice under section 142(1) should also be issued within that period.

17.25 AUDIT UNDER SECTION 142

Sub-sections (2A), (2B), (2C), and (2D), of section 142 contain the statutory provisions relating to the conduct of audit. Students may note that the audit envisaged under this provision is different from the compulsory tax audit under section 44AB.

1. **Basis for direction to get accounts audited**: If at any stage of the proceedings before him, the Assessing Officer, having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or
Commissioner, direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit.

The expression ‘accountant’ for this purpose means a ‘chartered accountant’ within the meaning of the Chartered Accountants Act, 1949.

(2) **Special Audit to be conducted by the accountant nominated by the Principal Chief Commissioner/Chief Commissioner/Principal Commissioner/Commissioner** - The accountant by whom the audit should be carried out would be nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax specifically for the purpose and the auditor is required to furnish the report of his audit in the prescribed form duly signed and verified by him and setting forth such other particulars as may be prescribed and also giving details in regard to such additional particulars as the Assessing Officer may require in respect of each individual case. The report of the auditor should be furnished in Form No.6B prescribed under Rule 14A of the Income-tax Rules, 1962. The accountant appointed for carrying out the audit becomes liable to carry out the requirements of audit as directed by Assessing Officer and it is the Principal Commissioner or Commissioner and not the assessee who would be his client for this purpose.

(3) **Opportunity of being heard to be given before issuing directions for special audit** - The Supreme Court in *Rajesh Kumar & Ors. v. DCIT* (*2006* 287 ITR 91) observed that the order under section 142(2A) is a quasi judicial order. Therefore, the principles of natural justice have to be applied and the assessee has to be given an opportunity of being heard before directing the special audit. The principles of natural justice are based on two principles, namely, (i) nobody shall be condemned unheard; (ii) nobody shall be a judge of his own cause. Once it is held that the assessee suffers civil consequences and any order passed would be prejudicial to him, the principles of natural justice must be held to be implicit. If the principles of natural justice were to be excluded, the Parliament could have said so expressly.
Accordingly, to give effect to the observation of the Supreme Court, it has been provided that the Assessing Officer is required to give the assessee an opportunity of being heard before issuing directions for special audit under section 142(2A).

(4) **Special audit may be directed even if accounts are audited under any other law** - The Assessing Officer is empowered to direct the audit to be carried out in the case of any particular assessee even if the accounts of the assessee have already been audited under any other law for the time being in force or otherwise.

(5) **Time limit** - The report of the auditor after conducting the audit must be furnished to Assessing Officer by the assessee within the period specified by the Assessing Officer in his order. The Assessing Officer is, however, entitled, *suo motu* on receipt of an application made in this behalf by the assessee for any good any sufficient reason to extend the time-limit by such further period or periods as he deems fit. Further, the aggregate of the period originally fixed and the period or periods so extended should not exceed 180 days in any case. This time of 180 days must be reckoned from the date on which the Assessing Officer's direction to get the accounts audited is received by the assessee.

(6) **Expenses of special audit to be paid by the Central Government** - Where the direction for special audit is issued by the Assessing Officer, the expenses of, and incidental to, such special audit, including remuneration of the Accountant, shall be determined by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in accordance with the prescribed guidelines. The expenses so determined shall be paid by the Central Government.

Rule 14B lays down the guidelines for the purposes of determining expenses for audit under section 142(2A). The said Rule is applicable when the audit under section 142(2A) is directed by an Assessing Officer on or after 1st June, 2007. The expenses of, and incidental to, audit (including the remuneration of the accountant, qualified assistants, semi-qualified and other assistants who may be engaged by such Accountant) should not be less than ₹ 3,750 and not more than ₹ 7,500 for every hour of the period as specified by the Assessing Officer under section 142(2C). Such period shall be specified in terms of the number of hours required for completing the report.

(7) **Assessee to be given an opportunity of being heard** - The assessee should, however, be given an opportunity of being heard in respect of any material gathered on the basis of –

(i) any inquiry under section 142(2); or

(ii) any audit under section 142(2A)

which is proposed to be utilized for the purposes of the assessment. If, however, the assessment is in nature of a best judgment assessment under section 144, it is not obligatory for the Assessing Officer to give the assessee an opportunity to be heard, before passing the assessment order on the basis of the report of the auditor.
(8) **Consequence of failure to get special audit done** - In any case, where the assessee is directed to get audit done and the assessee fails to do so, the Assessing Officer is entitled to make a best judgment assessment under section 144 in addition to imposing penalty or taking such steps as may be necessary under the law.

In a case where a Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner issued instructions under section 142(2A) nominating a Chartered Accountant for auditing the assessee’s accounts and though the concerned assessee was willing to produce the records, the concerned Chartered Accountant refused to audit the accounts, a question arose as to whether there was a failure on the assessee’s part to comply with the directions under section 142(2A) and consequently the best judgement assessment could be made under section 144(b).

The Supreme Court held that if for a frivolous reason the Chartered Accountant declined to undertake the audit of the assessee’s accounts, the assessee could not be held responsible. In such a case, there was no default or failure to comply with the direction issued under section 142(2A) on the assessee’s part so as to attract the provisions of section 144(b). The best judgement made by the Assessing Officer was set aside with the directions to appoint another Chartered Accountant within one month to get the accounts audited ([Swadeshi Polytex Ltd. v. ITO [1983] 144 ITR 171 (SC)]).

**17.26 POWER OF ASSESSING OFFICER TO MAKE A REFERENCE TO THE VALUATION OFFICER [SECTION 142A]**

(1) **Position prior to 1st October, 2014** - Under the erstwhile section 142A (prior to 1st October, 2014), the Assessing Officer was empowered to make a reference to the Valuation Officer to estimate the value of any investment referred to in section 69 or section 69B, any bullion, jewellery or other valuable article referred to in section 69A or section 69B or the fair market value of any property referred to in section 56(2) for the purpose of making an assessment or reassessment. The Assessing Officer may, on receipt of the report of the Valuation Officer, take into account such report for the purposes of assessment or reassessment after giving the assessee an opportunity of being heard.

The scope of section 142A prior to 1st October, 2014, was, thus, restricted in the sense that the Assessing Officer could make a reference to the Valuation Officer to estimate the value of investment/article only under the specific sections mentioned thereunder, namely, sections 69, 69A, 69B, and 56(2). Further, section 142A did not also provide for any time limit for furnishing of the report by the Valuation Officer.

(2) **Scope of section 142A widened with effect from 1st October, 2014** - In order to expand the scope of making reference to Valuation Officer and to provide for a time limit for furnishing
of the report by the Valuation Officer, section 142A has been substituted with effect from 1st October, 2014. Section 142A also expressly clarifies that there is no pre-condition that books of account have to be rejected for the purpose of making a reference to the Valuation Officer for estimation of the value of any investment or property.

As per section 142A, the Assessing Officer may, for the purposes of assessment or reassessment, make a reference to a Valuation Officer to estimate the value, including fair market value, of any asset, property or investment and submit the report to him. Thus, the scope of section 142A has been widened by removing references to the specific sections for which reference can be made by the Assessing Officer to the Valuation Officer.

Section 142A further clarifies that 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) **Powers of the Valuation Officer** - The Valuation Officer, shall, for the purpose of estimating the value of the asset, property or investment, have all the powers of section 38A of the Wealth-tax Act, 1957.

(4) **Estimation of value of asset, property or investment** - The Valuation Officer is required to estimate the value of the asset, property or investment after taking into account the evidence produced by the assessee and any other evidence in his possession gathered, after giving an opportunity of being heard to the assessee.

If the assessee does not co-operate or comply with the directions of the Valuation Officer he may, estimate the value of the asset, property or investment to the best of his judgment.

(5) **Time limit for submission of valuation report** - The Valuation Officer shall send a copy of his estimate to the Assessing Officer and the assessee within a period of six months from the end of the month in which the reference is made. Thus, a specific time limit has now been provided, within which the Valuation Officer has to send his report to the Assessing Officer.

(6) **Completion of assessment by taking into account valuation report** - On receipt of the report from the Valuation Officer, the Assessing Officer may, after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.

### 17.27 ASSESSMENT [SECTION 143]

Where a return has been made under section 139 or in response to a notice under section 142(1), if any tax or interest is found due an intimation should be sent to the assessee which will deemed to be a demand notice. If any refund is due to the assessee it shall be granted.

(1) **Summary assessment [Section 143(1)/(1A)/(1B)/(1C)]**

   (i) Section 143(1) provides for computation of the total income of an assessee after making the following adjustments to the returned income:-
(a) any arithmetical error in the return; or
(b) an incorrect claim, if such incorrect claim is apparent from any information in the return.
(c) Disallowance of loss claimed, if return is filed beyond due date u/s 139(1)
(d) Disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return
(e) Disallowance of deduction u/s 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or 80-IE, if return is filed beyond due date u/s 139(1)

However, before making any such adjustments, in the interest of natural justice, intimation has to be given to the assessee requiring him to respond to such adjustments. Such intimation may be in writing or through electronic mode. The response received, if any, has to be duly considered before effecting any adjustment. However, if no response is received within 30 days of issue of such intimation, the processing shall be carried out incorporating the adjustments.

(ii) The term “an incorrect claim apparent from any information in the return” shall mean such claim on the basis of an entry, in the return, –

(a) of an item, which is inconsistent with another entry of the same or some other item in such return;
(b) in respect of which, information required to be furnished to substantiate such entry, has not been furnished under this Act; or
(c) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction.

(iii) Tax, interest and fee should be computed on the basis of the total income computed after making the adjustments in (i) above.

(iv) The sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of such tax, interest and fee, if any, so computed by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under section 89, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91 any tax paid on self-assessment and any amount paid otherwise by way of tax, interest or fee.

(v) Based on the above adjustments, an intimation shall be prepared or generated and sent to the assessee within a period of one year from the end of the financial year in which the return was made. The intimation shall specify the sum determined to be payable by, or the amount of refund due to, the assessee.
(vi) If any amount of refund is due to the assessee, the same shall be granted to the
assessee.

(vii) An intimation shall also be sent to the assessee in a case where the loss declared in
the return by the assessee is adjusted but no tax, interest or fee is payable by, or no
refund is due to, him.

(viii) On the other hand, where there is neither any adjustment nor any tax due from or
refund payable to the assessee, the acknowledgement of the return shall be deemed
to be the intimation under section 143(1).

(ix) The scheme contemplates avoiding human interface and therefore, provides for
computerised processing of returns for making the above adjustments i.e., the
software will be designed to detect arithmetical inaccuracies and internal
inconsistencies and make appropriate adjustments in the computation of the total
income/fringe benefits.

(2) **Mandatory processing of return of income before issuance of assessment order**
[Section 143(1D)]

(i) Section 143(1) requires processing of return of income filed under section 139(1) or in
response to a notice issued under section 142(1).

(ii) An intimation has to be prepared or generated and sent to the assessee specifying the
sum payable or the refund due, to the assessee.

(iii) No intimation can be sent after the expiry of one year from the end of the financial year
in which the return is made. This is provided in the second proviso to section 143(1).

(iv) In respect of returns furnished for A.Y.2017-18 or thereafter, processing of a return
under section 143(1) is necessary even where a notice has been issued to the
assessee under section 143(2).

(v) However, to address the concern of recovery of revenue in doubtful cases, section
241A provides that, for the returns furnished for A.Y.2017-18 or thereafter, where
refund of any amount becomes due to the assessee under section 143(1) and the
Assessing Officer is of the opinion that grant of refund may adversely affect the
recovery of revenue, he may, for the reasons recorded in writing and with the previous
approval of the Principal Commissioner or Commissioner, withhold the refund upto the
date on which the assessment is made.

(3) **Regular assessment/Scrutiny assessment** [Section 143(2)/(3)] - If the Assessing Officer or
the prescribed income-tax authority [i.e., an income-tax authority not below the rank of an
Income-tax Officer who has been authorised by the CBDT to act as income-tax authority for
the purpose of section 143(2)] considers it necessary or expedient to ensure that the
assessee has not understated his income or has not computed excessive loss or has not
underpaid his tax in any manner he can issue a notice for making the assessment in the normal manner as at present. This will be a scrutiny assessment. It may be noted that notice for detailed scrutiny under section 143(2) cannot be issued after the expiry of 6 months from the end of the financial year in which the return of income is furnished.

On the day specified in the notice issued under section 143(2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer or the prescribed income-tax authority may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of 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.

It is also obligatory for research associations and other institutions exempt under clauses (21),(22B),(23A),(23B), sub-clauses (iv),(v),(vi) and (via) of clause (23C) of section 10 to file their returns of income. In these cases, the Assessing Officer cannot make an assessment denying exemption under section 10 without intimating the Central Government or the prescribed authority of the contravention of the provisions of the relevant sections and till the approval granted to these funds, trusts, institutions, universities, educational institutions or hospitals or medical institutions has been withdrawn or notification rescinded.

The time period for completing the assessment in such cases will exclude the period between the date on which the Assessing Officer gives the intimation of the default and date on which copy of the order withdrawing the approval is received by the Assessing Officer.

Section 2(15) provides that in case of a trust or institution, whose main object is the “advancement of object of general public utility”, the purpose does not remain charitable in a previous year, if its commercial receipts exceed 20% of total receipts. However, this temporary excess in one year may not be treated as altering the very nature of the trust or institution so as to lead to cancellation of registration or withdrawal of approval or rescinding
of notification issued in respect of trust or institution. Accordingly, such trust and institution does not get benefit of tax exemption under section 10(23C) or 11 or 12 in the year in which its receipts from commercial activities exceed 20% of total receipts, whether or not the registration or approval granted or notification issued is cancelled, withdrawn or rescinded in respect of such trust or institution. Consequently, in such a circumstance, no effect shall be given by the Assessing Officer to the exemption provisions under section 10(23C) while making an assessment of the total income or loss of the trust or institution for the previous year under section 143(3).

Assessing Officer empowered to send a proposal to the Central Government recommending withdrawal of approval of research association, university, college or other institution approved under section 35(1)(ii) and (iii)

(i) The guidelines, the manner and the conditions in accordance with which an application made by a research association, university, college or other institution shall be approved under section 35(1)(ii)/(iii) have been provided by the Taxation Laws (Amendment) Act, 2006. Also, the amendment provides for grant of one time approval, which means the approval is to remain in force unless it is withdrawn.

(ii) Therefore, the Assessing Officer is now required to satisfy himself as to the activities of the university, college or other institution referred to in clause (ii) or clause (iii) of section 35(1).

(iii) If the activities are not being carried out in accordance with all or any of the conditions subject to which any of the said entities had been approved, the Assessing Officer may, after giving a reasonable opportunity of showing cause to the concerned entity, send a proposal to the Central Government recommending withdrawal of approval.

(iv) The Central Government may, by order, withdraw the approval and forward a copy of the order to the concerned university, college or other institution and to the Assessing Officer.

(4) Scheme to be notified by the Central Government for greater efficiency, transparency and accountability [Section 143(3A)/(3B)/(3C)]

(i) The Central Government is empowered to notify a Scheme for assessing total income or loss of the assessee under section 143(3). Accordingly, the Central Government has, vide Notification No.61/2019 dated 12.9.2019, notified the E-assessment Scheme, wherein the assessment would 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 CBDT [Refer to Annexure at the end of this Chapter wherein the E-assessment Scheme as contained in the said notification has been detailed]

(ii) The Scheme would ensure greater efficiency, transparency & accountability by –

(a) eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible;
(b) optimising utilisation of the resources through economies of scale and functional specialisation;

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

The Scheme so notified has to be laid before each House of Parliament.

(iii) In order to give effect to this scheme, the Central Government, may direct on or before 31.03.2020 by way of notification, that the other provisions of this Act relating to assessment of total income or loss would not apply or would apply with certain exceptions, modifications and adaptations specified in the notification. Accordingly, the Central Government has, vide Notification No. 62 dated 12.9.2019, for the purposes of giving effect to the E-assessment Scheme, 2019 made under section 143(3A), directed that the provisions of section 2(7A), section 92CA, section 120, section 124, section 127, section 129, section 131, section 133, section 133A, section 133C, section 134, section 142, section 142A, section 143, section 144A, section 144BA, section 144C and Chapter XXI of the Income-tax Act, 1961 would apply to the assessment made in accordance with the said Scheme subject to certain exceptions, modifications and adaptations listed in said notification given as Annexure at the end of this Chapter.

(5) **Best judgment assessment [Section 144]**

Fails to comply with all the terms of a notice issued u/s 142(1) or a direction issued u/s 142(2A)  
Fails to file return u/s 139(1) and has not filed belated return u/s 139(4) or revised return u/s 139(5)  
Having filed a return, fails to comply with all the terms of a notice issued u/s 143(2)  
After giving the assessee an opportunity of being heard  
After taking into account all relevant material which he has gathered  

A.O. shall make a best judgment assessment
(i) **Best judgement assessment mandatory in all the three cases stated above** - It is mandatory for the Assessing Officer to make a best judgment assessment and he has no discretion to make or not to make such assessment. These three cases are alternative and not cumulative for the purpose of making an *ex parte* assessment.

(ii) **Opportunity of being heard** - Before making best judgement assessment, the Assessing Officer has to take into account all relevant material which he has gathered. The assessee must be given an opportunity of being heard. Such opportunity shall be given by an Assessing Officer by serving a notice calling upon the assessee to show cause on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment. Thereafter, the Assessing Officer shall make the assessment of total income or loss to the best of his judgment and determine the sum payable on the basis of such assessment. It may noted that no refund can be granted under section 144.

However, where a notice under section 142(1) has been issued prior to the making of an assessment under this section, it is not necessary to give such opportunity.

### 17.28 POWER OF JOINT COMMISSIONER TO ISSUE DIRECTIONS IN CERTAIN CASES [SECTION 144A]

(1) A Joint Commissioner may, on his own motion or on a reference being made to him by the Assessing Officer or on the application of an assessee, call for and examine the record of any proceeding in which an assessment is pending and, if he considers that, having regard to the nature of the case or the amount involved or for any other reason it is necessary so to do, he may issue such direction as he thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment. Such directions shall be binding on the Assessing Officer.

(2) No directions which are prejudicial to the assessee shall be issued before an opportunity is given to the assessee to be heard.

### 17.29 REFERENCE TO PRINCIPAL COMMISSIONER OR COMMISSIONER IN CERTAIN CASES [SECTION 144BA]

The diagram given in the next page would give you an understanding of the procedure for declaring any arrangement as an impermissible avoidance agreement. The short forms used in the diagram are:

<table>
<thead>
<tr>
<th>PC/C</th>
<th>Principal Commissioner/Commissioner</th>
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<tr>
<td>IAA</td>
<td>Impermissible Avoidance Agreement</td>
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</table>

| AP  | Approving Panel                     |
| AO  | Assessing Officer                   |
A.O. to make reference to PC/C at any stage of Asst./Reassessment proceedings, on the basis of material & evidence available to declare an arrangement as IAA and determine its consequence.

The PC/C to issue notice to assessee for submitting objections and providing an opportunity of being heard within a period not exceeding 60 days.

If assessee does not furnish objection to the notice within prescribed time:

PC/C to issue such directions as he deems fit for declaring the arrangement to be an IAA.

If PC/C is not satisfied with the explanation of the assessee:

PC/C to make reference to the AP for declaring arrangement as IAA.

AP to give an opportunity of being heard to the assessee.

For further inquiry, direct the PC/C to make such inquiry and furnish report.

Call for and examine such records relating to the matter as it deems fit.

Require the assessee to furnish such docs and evidence as it may direct.

AP to issue directions for declaration as an IAA and specifying the PYs in respect of which it is so declared within 6 months from the end of the month of receipt of reference.

Directions binding on the assessee, PC/C and subordinate IT authorities.

No appeal shall lie against such directions.

AO to complete the proceedings in accordance with such directions and provisions of Chapter X-A.

Prior approval of the PC/C required for passing assessment order, if any tax consequences have been determined in the order as per the provisions of Chapter X-A.
The following period has to be excluded in computing the said period:

(i) The period commencing from the date on which the first direction is issued by the Approving Panel to the Principal Commissioner or the Commissioner for getting inquiries conducted through the authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information so requested is last received by the Approving Panel or one year, whichever is less.

(ii) The period during which the proceeding of the Approving Panel is stayed by an order or injunction of any court.

**Note** – If, immediately after the exclusion of the aforesaid time or period, the period available to the Approving Panel for issue of directions is less than 60 days, such remaining period shall be extended to 60 days. Consequently, the aforesaid period of six months shall be deemed to have been extended accordingly.

### Approving Panel

<table>
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<tr>
<th>Particulars</th>
<th>Provisions</th>
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<tr>
<td>(1) Constitution</td>
<td>The Central Government may constitute one or more Approving Panels as may be necessary</td>
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<td>(2) Composition</td>
<td>Each Approving Panel may shall consist of three members including a Chairperson</td>
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| (3) Qualification of members | (i) The Chairman shall be a person who has been a judge of a High Court  
(ii) One member shall be a member of IRS not below the rank of PCC/CCIT  
(iii) One member shall be an academic or scholar having special knowledge of matters, such as direct taxes, business accounts and international trade practices. |
| (4) Term        | Ordinarily for one year; May be extended from time to time upto a period of three years.                                                       |
| (5) Frequency of Meeting | The Chairperson and members of the Approving Panel shall meet, as and when required, to consider the references made to the Panel. They shall be paid the remuneration as may be prescribed. |
| (6) Powers      | (i) The Approving Panel has to issue such directions, as it deems fit, in respect of declaration of the arrangement as an impermissible avoidance arrangement in accordance with the provisions of Chapter X-A including specifying the previous year or years to which such declaration of an arrangement as an impermissible avoidance arrangement shall apply.  
(ii) The Approving Panel, may, before issuing any direction under section 144BA(6), if it is of the opinion that any further inquiry in the matter is necessary, direct the PC/C to make such inquiry |
or cause the inquiry to be made by any other IT authority and furnish a report containing the result of such inquiry to it.

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<td>(iii)</td>
<td>Call for and examine such records relating to the matter as it deems fit.</td>
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<td>(iv)</td>
<td>Require the assessee to furnish such documents and evidence as it may direct</td>
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<tr>
<td>(v)</td>
<td>All the powers which are the vested in the AAR u/s 245U</td>
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<tr>
<th>(7)</th>
<th>Officers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The CBDT shall provide to the Approving Panel such officials as may be necessary for the efficient exercise of powers and discharge of functions of the Approving Panel under the Income-tax Act, 1961.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(8)</th>
<th>Rules</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The CBDT may make rules for the purpose of the constitution and efficient functioning of the Approving Panel and expeditious disposal of the references received.</td>
</tr>
</tbody>
</table>

17.30 PROVISION FOR CONSTITUTION OF ALTERNATE DISPUTE RESOLUTION MECHANISM [SECTION 144C]

An alternate dispute resolution mechanism which will aid speedy resolution of disputes on a fast track basis has now been provided for under the Income-tax Act, 1961. The significant features of the alternate dispute resolution mechanism are briefed hereunder –

1. The Assessing Officer shall, forward a draft order of assessment to the eligible assessee if he proposes to make, on or after 1st October, 2009, any variation in the income or loss returned which is prejudicial to the interest of such assessee.

   “Eligible assessee” means,-

   (i) any person in whose case such variation arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and

   (ii) any foreign company.

2. The eligible assessee shall, within thirty days of the receipt by him of the draft order,-

   (a) file his acceptance of the variations to the Assessing Officer; or

   (b) file his objections, if any, to such variation with,—

   (i) The Dispute Resolution Panel; and

   (ii) The Assessing Officer.

“Dispute Resolution Panel” means a collegium comprising of three commissioners of Income-tax constituted by the CBDT for this purpose.
(3) The Assessing Officer has to complete the assessment on the basis of the draft order, if—
   (a) the assessee intimates the acceptance of the variation to the Assessing Officer; or
   (b) no objections are received within the period of 30 days specified in (2) above.

(4) The Assessing Officer shall, notwithstanding anything contained in section 153 or section 153B, pass the assessment order within one month from the end of the month in which,—
   (a) the acceptance is received; or
   (b) the period of filing of objections expires.

(5) The Dispute Resolution Panel shall, in a case where any objections are received, issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

(6) The Dispute Resolution Panel shall issue such directions, after considering the following, namely:—
   (a) Draft order;
   (b) Objections filed by the assessee;
   (c) Evidence furnished by the assessee;
   (d) Report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;
   (e) Records relating to the draft order;
   (f) Evidence collected by, or caused to be collected by, it; and
   (g) Result of any enquiry made by, or caused to be made by it.

(7) The Dispute Resolution Panel may, before issuing any such directions -
   (a) make such further enquiry, as it thinks fit; or
   (b) cause any further enquiry to be made by any income tax authority and report the result of the same to it.

(8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order. However, it cannot set aside any proposed variation or issue any direction as mentioned in (5) above, for further enquiry and passing of the assessment order.

The power of the DRP to enhance the variation as mentioned in section 144C(8) shall include and shall be deemed to have always included the power to consider any matter arising out of the assessment proceedings relating to the draft order. This power to consider any issue shall be irrespective of whether the matter was raised by the eligible assessee or not.
While exercising the aforesaid power for considering any matter arising out of the assessment proceedings relating to the draft order, the DRP can only enhance the variation. The power of reducing the variation is not accorded to DRP in respect of such matters.

(9) If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

(10) Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.

(11) If any direction is prejudicial to the interest of the assessee or the interest of the revenue, then, the same can be issued only after an opportunity of being heard is given to the assessee or the Assessing Officer, as the case may be.

(12) Such direction has to be issued within nine months from the end of the month in which the draft order is forwarded to the eligible assessee.

(13) Upon receipt of such direction, the Assessing Officer has to complete the assessment in accordance with the same, within one month from the end of the month in which the direction is received. This is notwithstanding anything contained in section 153 or section 153B. There is no requirement of providing any further opportunity of being heard to the assessee.

(14) The CBDT is empowered to make rules for the efficient functioning of the Dispute Resolution Panel and speedy resolution of the objections filed by the eligible assessee.

17.31 INCOME ESCAPING ASSESSMENT [SECTIONS 147 TO 149]

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

The Assessing Officer may assess or reassess the income in respect of any issue (which has escaped assessment) which comes to his notice subsequently in the course of proceedings under this section, even though the reason for such issue does not form part of the reasons recorded under section 148(2).

(2) **Time limit** - Where an assessment under section 143(3) or 147 has already been made by the Assessing Officer for the relevant assessment year, then, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year.

The exception would be in cases where any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to
make a return under section 139, or in response to a notice issued under section 142(1) or section 148 or to disclose, fully and truly, all material facts necessary for his assessment for that assessment year.

It has been clarified that production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure.

The above time limit shall also not apply in a case where income chargeable to tax, in relation to an asset (including financial interest in an entity) located outside India, has escaped assessment for any assessment year. In effect, in such cases, the Assessing Officer can initiate assessment proceedings under section 147 even after the expiry of 4 years inspite of the assessee having –

(i) duly furnished his return of income and
(ii) fully and truly disclosing all material facts necessary for his assessment for that assessment year.

(3) **Reason to believe** - The Assessing Officer must have ‘reason to believe’ that income chargeable to tax had escaped assessment. The belief which prompts an Income-tax Officer to apply section 147 to any particular case must be that of an honest and reasonable person based upon reasonable grounds, and that the Assessing Officer may act under this section on direct or circumstantial evidence but not on a mere suspicion, gossip or rumor. The powers of the Assessing Officer are wide, but not plenary in nature. Care must be taken to note that the words used in the section are “reason to believe” and not ‘reason to suspect’. The expression ‘reason to believe’ does not, however, mean a purely subjective satisfaction on the part of the Assessing Officer. The belief must be held in good faith. It cannot be a mere pretence. It is open to the Court to examine whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. There is no requirement in any of the provisions of the Act or under any section laying down as a condition for the initiation of the proceeding that the reasons which induced the Assessing Officer, to issue the notice must also be communicated to the assessee. Therefore, the Assessing Officer need not communicate to the assessee the reasons, which led him to initiate the proceedings under section 147.

(4) **Reassessment of matters other than subject matter of appeal or revision** - The Assessing Officer may assess or reassess an income which is chargeable to tax and has escaped assessment other than the income involving matters which are the subject matter of any appeal, reference or revision.

(5) **Circumstances when income is deemed to have escaped assessment** - For the purpose of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment:
<table>
<thead>
<tr>
<th>Case</th>
<th>When income is deemed to have escaped assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>Where the assessee’s total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax. No return of income has been furnished by the assessee</td>
</tr>
<tr>
<td>(ii)</td>
<td>Where a return of income has been furnished by the assessee but no assessment has been made. It is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return.</td>
</tr>
<tr>
<td>(iii)</td>
<td>Where the assessee is required to furnish a report in respect of any international transaction under section 92E. The assessee has failed to furnish such report</td>
</tr>
<tr>
<td>(iv)</td>
<td>Where an assessment has been made (a) income chargeable to tax has been under-assessed (b) such income has been assessed at too low a rate (c) such income has been made the subject of excessive relief under this Act (d) excessive loss or depreciation or any other allowance under this Act has been computed.</td>
</tr>
<tr>
<td>(v)</td>
<td>where a return of income has not been furnished by the assessee On the basis of information or document received from the prescribed income-tax authority, under section 133C(2), it is noticed by the Assessing Officer that the income of the assessee exceeds the basic exemption limit</td>
</tr>
<tr>
<td>(vi)</td>
<td>where a return of income has been furnished by the assessee On the basis of information or document received from the prescribed income-tax authority, under section 133C(2), it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return.</td>
</tr>
</tbody>
</table>

In addition, income chargeable to tax has escaped assessment, where a person is found to have any asset (including financial transaction in any entity) located outside India.
Note - The CBDT has, vide Circular No.40/2016 dated 9.12.2016, clarified that reopening of cases under section 147 is feasible only when the Assessing Officer "has reason to believe that any income chargeable to tax has escaped assessment for any assessment year" and not merely on the basis of any reason to suspect. Mere increase in turnover, because of use of digital means of payment or otherwise, in a particular year cannot be a sole reason to believe that income has escaped assessment in earlier years. Hence, past assessments cannot be reopened merely on the ground that the current year's turnover has increased.

(6) **Issue of notice where income has escaped assessment [Section 148]** Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee, a notice requiring him to furnish a return within such period as may be specified in the notice, a return of his income or the income of any other person for whom he is assessable under the Act, during the previous year corresponding to the relevant assessment year in the prescribed form and verified in the prescribed manner and setting forth such other particulars may be prescribed. The provisions of this Act shall apply accordingly as if such return were a return required to be furnished under section 139.

The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.

(7) **Time limit for notice [Section 149]**: Notice under section 148 must be issued within the following time limit:

As per section 149(3), if the person on whom a notice under section 148 is to be served is a person treated as an agent of a non-resident under section 163 and the assessment,
reassessment or re-computation in pursuance of the notice is to be made on him as the agent of such non-resident, there is a time limit of 6 years from the end of the relevant assessment year, beyond which such notice cannot be issued.

(8) **Provision for cases where assessment is in pursuance of an order on appeal, etc.**

[Section 150]

(i) Section 149(1) provides the time limit for issue of notice u/s 148 for assessment, reassessment or recomputation where income has escaped assessment.

(ii) The restriction of time limit under section 149(1) is not applicable where notice u/s 148 is issued for making an assessment, reassessment or re-computation to give effect to any finding or direction contained in an order passed by any authority in any proceeding by way of appeal, reference or revision or by a Court in any proceeding under any other law. This relaxation is contained in section 150(1).

(iii) However, such relaxation will not apply where any such assessment or reassessment relates to an assessment year in respect of which an assessment or reassessment could not have been made at the time the order which was the subject matter of appeal, reference or revision, as the case may be, was made on account of the expiry of the time limit at that point of time itself. This restriction is contained in section 150(2).

(iv) Section 150(1) operates to relax the time restriction stipulated under section 149. Such relaxation can be made use of by the Assessing Officer only if the restriction placed under section 150(2) does not affect the operation of section 150(1). It may be noted that the restriction placed under section 150(2) is applicable only in respect of appeal, reference or revision referred to in section 150(1) but it does not apply with reference to an order passed by a Court in any proceeding under any law.

**ILLUSTRATION**

The assessment of Mr. Hari for A.Y.2012-13 was made on 28.3.2014 making an addition of ₹3,25,000 for a certain income received during the P.Y.2011-12. The assessee contested the addition before Commissioner (Appeals) but lost the case. The Appellate Tribunal passed an order on 26.2.2019 holding that the said income was not taxable in the P.Y.2011-12 but the same was taxable in the year of accrual, being P.Y.2006-07 relevant to A.Y.2007-08. The Assessing Officer issued notice under section 148 for A.Y.2007-08 in March 2019 bringing to tax the sum of ₹3,25,000. Is the notice valid?

Would your answer change if in the said case, the assessment order for A.Y.2012-13 was made on 4.4.2014 instead of 28.3.2014?

**SOLUTION**

Section 149 requires issue of notice under section 148 within a period of 6 years from the end of the relevant assessment year, where income escaping assessment exceeds ₹1 lakh. Accordingly, in respect of A.Y.2012-13, notice can be issued upto 31.3.2019. Section 150(1) enables issue of notice
at any time to give effect to a finding contained in an appellate order. However, this is subject to the provisions of section 150(2), which places a restriction that, if on the date of passing of the order which was the subject-matter of appeal, no notice could have been issued, then, such notice cannot be issued by virtue of the enabling provision contained in section 150(1).

In this case, the income was taxable in the A.Y.2007-08 as per the order of the Appellate Tribunal. The six year time limit, in this case, expires on 31.3.2014. Since the original assessment in respect of such income was made on 28.3.2014, the notice issued under section 148 consequent to the Appellate Tribunal order is valid.

Had the assessment order for A.Y.2012-13 been made on 4.4.2014 (instead of 28.3.2014), then, the same would have been outside the six year time limit from A.Y.2007-08. Hence, since notice could not have been issued at that point of time, it cannot be now issued invoking the provisions of section 150(1).

17.32 SANCTION FOR ISSUE OF NOTICE [SECTION 151]

(i) Section 151 requires the Assessing Officer to obtain sanction from certain authorities before issue of notice for reassessment of income under section 148, under certain specified circumstances.

(ii) The simplified approval regime with effect from 1.6.2015 for issue of notice for reassessment is given hereunder:

<table>
<thead>
<tr>
<th>Time limit (from the end of the relevant A.Y.)</th>
<th>Issue of Notice under section 148 by</th>
<th>Competent authority who has to be satisfied on the reasons recorded by the A.O., that it is a fit case for the issue of such notice</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Upto 4 years</td>
<td>Assessing Officer below the rank of Joint Commissioner</td>
<td>Joint Commissioner</td>
</tr>
<tr>
<td>(2) After 4 years</td>
<td>Assessing Officer</td>
<td>Principal Chief Commissioner/Chief Commissioner/Principal Commissioner/Commissioner</td>
</tr>
</tbody>
</table>

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It is further clarified that in the above cases, the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner or the Joint Commissioner, as the case may be, has to be satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148. However, these authorities are not required to issue the notice themselves.

17.33 OTHER PROVISIONS [SECTION 152]

(1) **Income escaping assessment to be charged to tax at rates applicable for respective years [Section 152(1)]**

In the case of any assessment or reassessment or recomputation made under section 147, the income escaping assessment would be chargeable to tax at the rate applicable to the respective years in which such income is liable to be taxed.

(2) **Assessee entitled to claim dropping of proceedings under section 147 in certain cases [Section 152(2)]**

Where an assessment is reopened under section 147, the assessee may claim that the proceedings under section 147 shall be dropped on his showing that he had been assessed on an amount not lower than what he would be rightly liable for even if the income alleged to have escaped assessment had been taken into account. Alternatively, he can make such a claim on showing that the assessment or computation had been properly made. An assessee can avail this benefit only if he had not challenged any part of the original assessment order either by filing an appeal or filing a revision petition. The assessee, while making such claim, shall not be entitled to reopen matters concluded by an order under sections 154, 155, 260, 262 or 263.

17.34 TIME LIMIT FOR COMPLETION OF ASSESSMENTS AND REASSESSMENTS [SECTION 153]

(1) **Time limits in different cases/circumstances** - The time limit for completion of assessment proceedings is 21 months from the end of the assessment year in which the income was first assessable. Further, no order of assessment, reassessment or re-computation could be made under section 147 after the expiry of 9 months from the end of the financial year in which notice under section 148 was served.

Since digitisation of processes within the Department has enhanced its efficiency in handling workload, the time limit has been accordingly reduced, so that the assessment proceedings are finalised more expeditiously.
<table>
<thead>
<tr>
<th>Section</th>
<th>Proceeding</th>
<th>Case/Circumstance</th>
<th>Time limit for completion of assessment or reassessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>153(1)</td>
<td>Order of assessment u/s 143 or 144</td>
<td>In respect of an order relating to: A.Y.2017-18 or any earlier A.Y. and made on or after 1.6.2016 A.Y.2018-19</td>
<td>21 months from the end of the assessment year in which the income was first assessable 18 months from the end of the assessment year in which the income was first assessable</td>
</tr>
<tr>
<td></td>
<td></td>
<td>A.Y.2019-20 and thereafter</td>
<td>12 months from the end of the assessment year in which the income was first assessable</td>
</tr>
<tr>
<td>153(2)</td>
<td>Order of assessment, reassessment or recomputation u/s 147</td>
<td>Where notice u/s 148 is served before 1.4.2019</td>
<td>9 months from the end of the financial year in which the notice is served</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where notice u/s 148 is served on or after 1.4.2019</td>
<td>12 months from the end of the financial year in which the notice is served</td>
</tr>
<tr>
<td>153(3)</td>
<td>Fresh assessment u/s 143/144/ 147 where the original assessment has been set aside, cancelled and referred back to the Assessing Officer by an order u/s 254/263/264</td>
<td>If order u/s 254/263/264 is passed before 1.4.2019</td>
<td>9 months from the end of the financial year in which the said order u/s 254 is received by the PCC/CC/PC/CIT or the order u/s 263 or u/s 264 is passed by the PC/CIT</td>
</tr>
<tr>
<td></td>
<td></td>
<td>If order u/s 254/263/264 is passed on or after 1.4.2019</td>
<td>12 months from the end of the financial year in which the said order u/s 254 is received by the PCC/CC/PC/CIT or the order u/s 263 or u/s 264 is passed by the PC/CIT</td>
</tr>
<tr>
<td>153(4)</td>
<td>Where a reference is made to the TPO u/s</td>
<td>An additional time period of 12 months is available for</td>
<td></td>
</tr>
</tbody>
</table>

\(^2\)Principal Chief Commissioner (PCC) / Chief Commissioner (CC) / Principal Commissioner (PC) / Commissioner of Income-tax (CIT).
<table>
<thead>
<tr>
<th>92CA(1) during the course of proceeding for assessment or reassessment: Completion of assessment u/s 143 or u/s 144.</th>
<th>completion of assessment/ reassessment in such cases. Thus, the revised time limit shall be as follows:</th>
</tr>
</thead>
<tbody>
<tr>
<td>In relation to A.Y.2017-18 or earlier A.Y.</td>
<td>33 months from the end of the assessment year in which the income was first assessable.</td>
</tr>
<tr>
<td>In relation to A.Y.2018-19</td>
<td>30 months from the end of the assessment year in which the income is first assessable</td>
</tr>
<tr>
<td>In relation to A.Y.2019-20 or any subsequent A.Y.</td>
<td>24 months from the end of the assessment year in which the income is first assessable</td>
</tr>
<tr>
<td>Completion of assessment/ reassessment/re-computation u/s 147</td>
<td>Where notice u/s 148 is served before 1.4.2019</td>
</tr>
<tr>
<td>Where notice u/s 148 is served on or after 1.4.2019</td>
<td>24 months from the end of the financial year in which the notice u/s 148 is served</td>
</tr>
<tr>
<td>Completion of fresh assessment in pursuance of an order u/s 254 (received by the PCC or CC/PC or CIT) or an order passed by the PC or CIT u/s 263 or u/s 264.</td>
<td>Where order u/s 254/263/264 is passed before 01.04.2019</td>
</tr>
<tr>
<td>Where order u/s 254/263/264 is passed on or after 01.04.2019</td>
<td>24 months from the end of the F.Y. in which the said order u/s 254 is received by the PCC/CC/PC/CIT or the order u/s 263 or u/s 264 is passed by the PC/CIT if order u/s 254/263/264 is passed on or after 01.04.2019</td>
</tr>
<tr>
<td>153(5) Effect to be given by the Assessing Officer, to an</td>
<td>Where order u/s 250/254/260/262/263/264</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>153(6)(i)</td>
<td>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.</td>
</tr>
<tr>
<td>153(6)(ii)</td>
<td>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 under section 147</td>
</tr>
</tbody>
</table>

*Note* – Additional period of 6 months may be allowed to the A.O. to give effect to order if the PC/CIT is satisfied, on an application from the A.O., that the order could not be given effect to within 3 months due to reasons beyond the control of the A.O.
1. **153(8)**
   - The order of assessment or reassessment, relating to any assessment year, which stands revived under section 153A(2)
   - 1 year from the end of the month of such revival or within the period specified in section 153 or section 153B(1), whichever is later.
   - **Note** - This is notwithstanding anything contained in the foregoing provisions of section 153, section 153A(2) or section 153B(1).

2. **Exclusion of period [Explanation 1 to section 153]** - In computing the period of limitation for the purposes of section 153 the following time periods shall be excluded:

<table>
<thead>
<tr>
<th>Case</th>
<th>Exclusion of Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>Contravention of the provisions of section 10(21)/(22B)/(23A)/(23B)/(23C)(iv)/(v)/(vi)/(via)</td>
</tr>
<tr>
<td></td>
<td>the date on which the A.O. intimates the Central Government or the prescribed authority, the said contravention as required under clause (i) of the proviso to section 143(3)</td>
</tr>
<tr>
<td></td>
<td>the date on which the copy of the order withdrawing the approval or rescinding the notification, as the case may be, is received by the A.O.</td>
</tr>
<tr>
<td>(ii)</td>
<td>Direction to get accounts audited under section 142(2A)</td>
</tr>
<tr>
<td></td>
<td>the date on which the A.O. directs the assessee to get his accounts audited under section 142(2A)</td>
</tr>
<tr>
<td></td>
<td>the last date on which the assessee is required to furnish a report of such audit (or) the date on which the order setting aside such direction is received by the PC/CIT, if such direction is challenged before a Court.</td>
</tr>
<tr>
<td>(iii)</td>
<td>Reference to the Valuation Officer under section 142A(1)</td>
</tr>
<tr>
<td></td>
<td>the date on which the Assessing Officer makes a reference to the Valuation Officer</td>
</tr>
<tr>
<td></td>
<td>the date on which the report of the Valuation Officer is received by the Assessing Officer.</td>
</tr>
<tr>
<td>(iv)</td>
<td>Where the assessee furnishes declaration claiming that any question of law arising in his</td>
</tr>
<tr>
<td></td>
<td>the date on which the Assessing Officer received the declaration under section 158A(1)</td>
</tr>
<tr>
<td></td>
<td>the date on which the order under section 158A(3) is made by him</td>
</tr>
<tr>
<td>Case for an assessment year which is pending before the A.O. or any appellate authority is identical with a question of law arising in his case for another A.Y. which is pending before the High Court or Supreme Court.</td>
<td>Note – However, such period cannot exceed 60 days.</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>(v) Where an application made before the Income-tax Settlement Commission is rejected by it or is not allowed to be proceeded with by it</td>
<td>the date on which an application is made before the Settlement Commission under section 245C</td>
</tr>
<tr>
<td>(vi) Where an application is made before the AAR u/s 245Q(1)</td>
<td>the date on which an application is made before the AAR u/s 245Q(1)</td>
</tr>
<tr>
<td>(vii) Where reference(s) for exchange of information is made by a competent authority</td>
<td>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 section 90 or section 90A</td>
</tr>
<tr>
<td>(viii) 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</td>
<td></td>
</tr>
<tr>
<td>(ix) the period during which the assessment proceeding is stayed by an order or injunction of any court.</td>
<td></td>
</tr>
</tbody>
</table>
(3) **Period of limitation in certain cases**

<table>
<thead>
<tr>
<th>Case</th>
<th>Period of limitation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Where immediately after the exclusion of the aforesaid period, the period of limitation referred to in section 153(1)/(2)/(3)/(8) available to the Assessing Officer for making an order of assessment, reassessment or re-computation, as the case may be, is less than 60 days</td>
<td>Such remaining period shall be extended to <strong>60 days</strong> and the aforesaid period of limitation shall be deemed to be extended accordingly</td>
</tr>
<tr>
<td>(ii) Where the period available to the Transfer Pricing Officer is extended to 60 days in accordance with the proviso to section 92CA(3A) and the period of limitation available to the Assessing Officer for making an order of assessment, reassessment or re-computation, as the case may be, is less than 60 days</td>
<td>Such remaining period shall be extended to <strong>60 days</strong> and the aforesaid period of limitation shall be deemed to be accordingly extended.</td>
</tr>
<tr>
<td>(iii) Where a proceeding before the Settlement Commission abates under section 245HA</td>
<td>The period of limitation available under this section to the Assessing Officer for making an order of assessment, reassessment or re-computation, as the case may be, after the exclusion of the period under section 245HA(4), would be not less than one year; and Where such period of limitation is less than 1 year, it shall be deemed to have been extended to 1 year. This would apply 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.</td>
</tr>
</tbody>
</table>

(4) **Deeming provisions in respect of assessment of excluded income for another assessment year or on another person**

<table>
<thead>
<tr>
<th>Case</th>
<th>Consequence</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Where, by an order referred to in section 153(6)(i), any income is</td>
<td>An assessment of such income for another assessment year shall, for the purposes of</td>
</tr>
</tbody>
</table>
excluded from the total income of
the assessee for an assessment
year
sections 150 and 153, be deemed to be one
made in consequence of or to give effect to
any finding or direction contained in the said
order
Where, by an order referred to in
section 153(6)(i), any income is
excluded from the total income of
one person and held to be the
income of another person
An assessment of such income on such
other person shall, for the purposes
of section 150 and section 153, be deemed to
be one made in consequence of or to give
effect to any finding or direction contained in
the said order, provided such other person
was given an opportunity of being heard
before the said order was passed.

17.35 ASSESSMENT PROCEDURE IN CASE OF SEARCH
OR REQUISITION [SECTION 153A/153B/153C]

The block assessment procedure introduced in 1995 and in operation since then for 8 years with
various amendments from time to time has been abolished in respect of search carried out after 31st
May, 2003. In the place of the block assessment, a scheme of reassessment was introduced by
inserting three sections 153A, 153B and 153C with effect from 1st June, 2003 for assessment in case
of search or making requisition.

(1) **Procedure for assessment where search is initiated under section 132 or books of
account etc. are requisitioned under section 132A [Section 153A]**

(i) **Overriding provisions of section 153A:** The provisions of section 153A prescribing
a procedure for assessment in the case of search or requisition will apply
notwithstanding anything contained in sections 139/147/148/149/151 and 153.

This section provides for the procedure for completion of assessment where a search
is initiated under section 132 or books of account, other documents or any assets are

(ii) **Issue of Notice:** In such cases, the Assessing Officer shall issue notice to such
person. Such a person has to furnish a return of income within such period as may be
specified in the notice setting forth such other particulars as may be prescribed.

(iii) **Filing of return in response to notice:** Such a return should be filed in respect of six
assessment years and for the relevant assessment year or years immediately
preceeding the assessment year relevant to the previous year in which the search was
conducted under section 132 or requisition was made under section 132A.

The expression "relevant assessment year" shall mean an assessment year
preceding the assessment year relevant to the previous year in which search is
conducted or requisition is made which falls beyond six assessment years but not later
than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

(iv) **Year upto which income can be assessed:** The Assessing Officer shall assess or reassess the total income of each of these six assessment years and for the relevant assessment year or years.

(v) **Pending assessments to abate:** The assessment or reassessment, if any, relating to any assessment year falling within the above period of six assessment years and for the relevant assessment year or years, pending on the date of the initiation of the search under section 132 or requisition under section 132A, as the case may be, shall abate. In other words, they will cease to be applicable.

(vi) **Notice to be issued only for the assessment year relevant to the previous year of search in case of notified class of cases:** The Central Government is empowered to notify class or classes of cases [except the cases where any assessment or reassessment has abated] in which the Assessing Officer shall not be required to issue notice for initiation of assessment or reassessment of total income for six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted or requisition was made and for the relevant assessment year or years. The assessment proceedings in the class or classes of cases so notified shall be carried out only for the assessment year relevant to the previous year in which search was conducted or requisition was made, except in cases where any assessment or reassessment in respect of any of the earlier six years has abated.

Accordingly, in exercise of this power, the Central Government has, through Notification No.42/2012 dated 4.10.2012, inserted Rule 112F which came into force from 1st July, 2012.

The said Rule provides that the Assessing Officer is not required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made, in the following cases:

(a) where as a result of a search under section 132(1) or a requisition made under section 132A, a person is found to be in possession of any money, bullion, jewellery or other valuable articles or things, whether or not he is the actual owner of the same, and

(b) where such search is conducted or such requisition is made in the territorial area of an assembly or parliamentary constituency in respect of which a notification has been issued under section 30 read with section 56 of the Representation of the People Act, 1951, or where the assets so seized or requisitioned are connected in any manner to the ongoing election in an assembly or parliamentary constituency.
However, this Rule is not applicable to cases where such search under section 132 or such requisition under section 132A has taken place after the hours of poll so notified.

Circular No.10/2012 dated 31.12.2012 clarifies that the aforesaid provision would reduce infructuous and unnecessary proceedings under the Income-tax Act, 1961 in cases where a search is conducted under section 132 or requisition is made under section 132A and cash or other assets are seized during the election period, generally on a single warrant, and no evidence is available, or investigation required, for any assessment year other than the assessment year relevant to the previous year in which search is conducted or requisition is made.

In such cases, the officer investigating the case, with the approval of the Director General of Income-tax, is required to certify that -

(a) the search is conducted under section 132 or the requisition is made under section 132A in the territorial area of an assembly or parliamentary constituency in respect of which a notification has been issued under section 30, read with section 56 of the Representation of the People Act, 1951; or

(b) the assets seized or requisitioned are connected in any manner to the ongoing election process in an assembly or parliamentary constituency; and

(c) no evidence is available or investigation is required for any assessment year other than the assessment year relevant to the previous year in which search is conducted or requisition is made.

The certificate of the investigating officer shall be communicated to the Commissioner of Income-tax and the Assessing Officer having jurisdiction over the case of such person.

(vii) **Conditions to be satisfied for issue of notice beyond six years prior to the year of search:** No notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless:

(a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of assets, which has escaped assessment amounts to or is likely to amount to ₹ 50 lakhs or more in the relevant assessment year or in aggregate in the relevant assessment years.

(b) the income so referred above has escaped assessment for such year or years

(c) the search under section 132 is initiated or requisition under section 132A is made on or after 1.4.2017

For this purpose, "asset" includes immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.
(viii) **Revival of abated proceeding:** If any proceeding initiated under section 153A or any order of assessment or reassessment made under section 153A(1) has been annulled in any appeal or other legal proceeding, the abated assessment or reassessment relating to any assessment year shall stand revived with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner. If the order of annulment is set aside, such revival shall cease to have effect.

(ix) **Applicability of other provisions of the Act:** Unless section 153A, section 153B and section 153C provide otherwise, all other provisions of the Income-tax Act, 1961, shall apply to the assessment or reassessment made in respect of assessment year under this section.

(x) **Applicable rate of tax:** The tax shall be chargeable at the rate or rates as applicable to such assessment year.

(2) **Time-limit for completion of search assessments [Section 153B]**

(i) The time limit for assessment or reassessment under section 153B with effect from 1st June, 2016 is as follows -

<table>
<thead>
<tr>
<th>Section</th>
<th>Proceeding under section</th>
<th>Case/Circumstance</th>
<th>Time limit for completion of assessment or reassessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>153B(1)</td>
<td>153A – for the assessment year relevant to the previous year in which search is conducted u/s 132 or requisition is made u/s 132A and for each of the 6 assessment years and for the relevant assessment year or years immediately preceding the assessment year relevant to the previous year in which search was conducted</td>
<td>Where the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed prior to F.Y. 2018-19</td>
<td>21 months from the end of the financial year in which the last of the authorizations for search u/s 132 or for requisition u/s 132A was executed.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed during the F.Y. 2018-19.</td>
<td>18 months from the end of the financial year in which the last of the authorizations for search u/s 132 or for requisition u/s 132A was executed.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed during</td>
<td>12 months from the end of the financial year in which the last of the authorizations for</td>
</tr>
<tr>
<td>153B(1) – First Proviso</td>
<td>In case of a person assessed under section 153C – for the assessment year relevant to the previous year in which search is conducted and for each of the 6 assessment years and for the relevant assessment year or years immediately preceding the assessment year relevant to the previous year in which search was conducted</td>
<td>Where the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed prior to F.Y. 2018-19</td>
<td>Where the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed during the F.Y. 2018-19.</td>
</tr>
</tbody>
</table>
Where the last of authorisations for search u/s 132 or requisition u/s 132A was executed during the F.Y.2019-20 or thereafter

12 months from the end of the F.Y. in which last of the authorizations for search u/s 132 or for requisition u/s 132A was executed (or)
12 months from the end of the F.Y. in which books of account or documents or assets seized or requisitioned are handed over to the jurisdictional A.O. u/s 153C, whichever is later.

In case reference under section 92CA(1) is made during the course of proceedings for the assessment or reassessment of total income in case of other person referred to in section 153C

The above time limit shall be further extended by 12 months.

(ii) **Time of deemed execution of authorization in case of search and requisition**:

<table>
<thead>
<tr>
<th>Case</th>
<th>Time when authorization is deemed to have been executed</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Search u/s 132</td>
<td>On the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued</td>
</tr>
</tbody>
</table>
(b) Requisition u/s 132A

On the actual receipt of books of account or other documents or assets by the Authorised Officer.

(iii) **Exclusion of period [Explanation to section 153B]** - In computing the period of limitation for the purposes of section 153B, the following time periods shall be excluded:

<table>
<thead>
<tr>
<th>Case</th>
<th>Exclusion of Period</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Commencing from</td>
</tr>
<tr>
<td>(a)</td>
<td>Direction to get accounts audited under section 142(2A)</td>
</tr>
<tr>
<td>(b)</td>
<td>Reference to the Valuation Officer under section 142A(1)</td>
</tr>
<tr>
<td>(c)</td>
<td>Where an application made before the Income-tax Settlement Commission is rejected by it or is not allowed to be proceeded with by it</td>
</tr>
<tr>
<td>(d)</td>
<td>Where an application is made before the AAR u/s 245Q(1)</td>
</tr>
</tbody>
</table>
### Period of limitation in certain cases -

<table>
<thead>
<tr>
<th>Case</th>
<th>Period of limitation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>(a)</strong> Where immediately after the exclusion of the aforesaid period, the period of limitation referred to in section 153B(1)(a) and (b) available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than 60 days</td>
<td>Such remaining period shall be extended to <strong>60 days</strong> and the aforesaid period of limitation shall be deemed to be extended accordingly</td>
</tr>
<tr>
<td><strong>(b)</strong> Where the period available to the Transfer Pricing Officer is extended to 60 days in accordance with the proviso to section 92CA(3A) and the period of limitation available to the Assessing Officer for making an order of assessment, reassessment or re-</td>
<td>Such remaining period shall be extended to <strong>60 days</strong> and the aforesaid period of limitation shall be deemed to be accordingly extended</td>
</tr>
</tbody>
</table>
### Assessment Procedure

| (c) | Where a proceeding before the Settlement Commission abates under section 245HA | The period of limitation available under this section to the Assessing Officer for making an order of assessment, reassessment or re-computation, as the case may be, after the exclusion of the period under section 245HA(4), would be not less than one year; and Where such period of limitation is less than 1 year, it shall be deemed to have been extended to 1 year.

**Note** – Period u/s 245HA(4) is the period commencing from the date of application to the Settlement Commission u/s 245C and ending with the specified date for abatement.

### Assessment or reassessment of income of any other person [Section 153C]

**Handing over of books of accounts, documents, assets seized or requisitioned to jurisdictional Assessing Officer, where they belong to another person:** Section 153C provides for assessment or reassessment of income of any other person.

Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that -

- any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to;
- any books of account or documents seized or requisitioned pertain to;
- any information contained therein, relates to any person, other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person.

**Jurisdictional Assessing Officer to proceed against other person [Section 153C(1)]:** The Assessing Officer having jurisdiction over the other person shall proceed against such other person and issue such other person notice and assess or...
reassess income of such other person in accordance with the provisions of section 153A only if he is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in section 153A(1).

(iii) **Pending assessments to abate:** The assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in the said section and for the relevant assessment year or years referred to in section 153A(1) pending on the date of initiation of the search under section 132 or on the date of making of requisition under section 132A, as the case may be, shall abate.

(iv) **Date of initiation of search [Section 153C(1)]:** In case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having the jurisdiction over such other person.

(v) **Notice for the assessment year relevant to the previous year of search in case of notified class of cases:** The Central Government is empowered to notify class or classes of cases [except the cases where any assessment or reassessment has abated] in which the Assessing Officer shall not be required to issue notice for initiation of assessment or reassessment of total income for six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted or requisition was made and for the relevant assessment year or years as referred to in sub-section (1) of section 153A.

The assessment proceedings in the class or classes of cases so notified shall be carried out only for the assessment year relevant to the previous year in which search was conducted or requisition was made, except in cases where any assessment or reassessment in respect of any of the earlier six years has abated.

Accordingly, in exercise of this power, the Central Government has, through Notification No.42/2012 dated 4.10.2012, inserted Rule 112F which came into force from 1st July, 2012.

The said Rule provides that the Assessing Officer is not required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made, in the following cases:

(a) where as a result of a search under section 132(1) or a requisition made under section 132A, a person is found to be in possession of any money, bullion,
jewellery or other valuable articles or things, whether or not he is the actual owner of the same, and

(b) where, such search is conducted or such requisition is made in the territorial area of an assembly or parliamentary constituency in respect of which a notification has been issued under section 30 read with section 56 of the Representation of the People Act, 1951, or where the assets so seized or requisitioned are connected in any manner to the ongoing election in an assembly or parliamentary constituency.

However, this Rule is not applicable to cases where such search under section 132 or such requisition under section 132A has taken place after the hours of poll so notified.

Circular No.10/2012 dated 31.12.2012 clarifies that the aforesaid amendment was introduced with a view to reduce infructuous and unnecessary proceedings under the Income-tax Act, 1961 in cases where a search is conducted under section 132 or requisition is made under section 132A and cash or other assets are seized during the election period, generally on a single warrant, and no evidence is available, or investigation required, for any assessment year other than the assessment year relevant to the previous year in which search is conducted or requisition is made.

In such cases, the officer investigating the case, with the approval of the Director General of Income-tax, is required to certify that -

(a) the search is conducted under section 132 or the requisition is made under section 132A in the territorial area of an assembly or parliamentary constituency in respect of which a notification has been issued under section 30, read with section 56 of the Representation of the People Act, 1951; or

(b) the assets seized or requisitioned are connected in any manner to the ongoing election process in an assembly or parliamentary constituency; and

(c) no evidence is available or investigation is required for any assessment year other than the assessment year relevant to the previous year in which search is conducted or requisition is made.

The certificate of the investigating officer shall be communicated to the Principal Commissioner or Commissioner of Income-tax and the Assessing Officer having jurisdiction over the case of such person.

(vi) **Manner of assessment where jurisdictional Assessing Officer receives books of account etc. after due date of filing of return [Section 153C(2)]:** In respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A, in case of such other person, where -
(a) no return of income has been furnished by such person and no notice under section 142(1) has been issued to him, or

(b) a return of income has been furnished by such person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made,

before the date of receiving of books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person for such assessment year in the manner provided in section 153A. [Section 153C(2)].

The provisions of sub-section (2) would apply where books of account or documents or assets seized or requisitioned referred to in sub-section (1) has been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A.

(vii) **Applicability of Supreme Court Guidelines on recording of satisfaction note under section 158BD to apply to proceedings under section 153C for the purposes of assessment of income of a person other than the person in respect of whom search is initiated under section 132 or books of account are requisitioned under section 132A** [Circular No.24/2015, dated 31-12-2015]

The issue of recording of satisfaction for the purposes of section 158BD/153C has been subject matter of litigation.

The Hon’ble Supreme Court in the case of *M/s Calcutta Knitwears* in its detailed judgment in Civil Appeal No. 3958 of 2014 dated 12-3-2014 (available in NJRS at 2014-LL-0312-51) has laid down that for the purpose of section 158BD of the Act, recording of a satisfaction note is a pre-requisite and the satisfaction note must be prepared by the Assessing Officer before he transmits the record to the other Assessing Officer who has jurisdiction over such other person under section 158BD3.

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3Section 158BC lays down the procedure for block assessment dealt with in Chapter XIV-B of the Income-tax Act, 1961, which applies where search is initiated under section 132 or books of account are requisitioned under section 132A on or before 31.5.2003. Section 158BD provides that where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search is made under section 132 or books of account are requisitioned under section 132A, then, the books of account, other documents seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person under section 158BD.
The Supreme Court held that “the satisfaction note could be prepared at any of the following stages:

(a) at the time of or along with the initiation of proceedings against the searched person under section 158BC; or

(b) in the course of the assessment proceedings under section 158BC; or

(c) immediately after the assessment proceedings are completed under section 158BC of the searched person.

Several High Courts have held that the provisions of section 153C are substantially similar pari-materia to the provisions of section 158BD and therefore, the above guidelines of the Supreme Court, apply to proceedings under section 153C, for the purposes of assessment of income of other than the searched person. This view has been accepted by CBDT.

It is further clarified that even if the Assessing Officer of the searched person and the "other person" is one and the same, then also he is required to record his satisfaction as has been held by the Courts.

(4) **Prior approval of Joint Commissioner required for assessment or reassessment in respect of search cases [Section 153D]**

Section 153D provides that assessment or reassessment of search cases in respect of each assessment year referred to in section 153A(1)(b) or the assessment year referred to in 153B(1)(b) shall not be made by an Assessing Officer below the rank of Joint Commissioner without the previous approval of the Joint Commissioner.

However, the prior approval of Joint Commissioner is not required where the assessment or reassessment order is required to be passed by the Assessing Officer with the prior approval of Principal Commissioner or Commissioner under section 144BA(12).

(5) **Presumption as to assets, books of account, etc. [Section 292C]**

This section provides that where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132 or survey under section 133A, it may, in any proceeding under this Act, be presumed that -

(i) such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) the contents of such books of account and other documents are true; and

and that Assessing Officer shall proceed under section 158BC against such other person and the provisions of Chapter XIV-B shall apply accordingly.
(iii) the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting;

(iv) In the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

Further, this presumption has also been extended to books of account, other documents or assets which have been delivered to the requisitioning officer in accordance with the provisions of section 132A. For this purpose, sub-section (2) provides that where any books of accounts, other documents or assets have been delivered to the requisitioning officer in accordance with the provision of section 132A, then, the presumption would apply as if such books of accounts, other documents or assets which had been taken into custody from the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of section 132A, had been found in the possession or control of that person in the course of a search under section 132.

(6) **Assessment to be made individually in search cases even where the authorization or requisition mentions the name of more than one person [Section 292CC]**

(i) Under section 132 and section 132A, an authorization can be issued or a requisition can be made, as the case may be, where the Director General or the Director, in consequence of information in his possession, has reason to believe that any person is in possession of any money, bullion, jewellery or other valuable article or thing. In such a case, he may authorize the income-tax authorities mentioned therein to enter and search any building, place, vehicle, etc. and seize any such books of accounts, other documents, undisclosed property, etc.

(ii) In a case where search is initiated under section 132 or requisition is made under section 132A, assessment is to be completed under the provisions of section 153A or section 153C or section 143(3).

(iii) Section 292CC provides that:

(a) it shall not be necessary to issue an authorization under section 132 or make a requisition under section 132A separately in the name of each person;

(b) where an authorization under section 132 has been issued or a requisition under section 132A has been made mentioning therein the name of more than one person, the mention of such names of more than one person on such authorization or requisition shall not be deemed to construe that it was issued in the name of an association of persons or body of individuals consisting of such persons;
These provisions would apply irrespective of anything contrary contained in any other provision of the Act.

(c) Further, even if an authorization under section 132 has been issued or requisition under section 132A has been made mentioning therein the name of more than one person, the assessment or reassessment shall be made separately in the name of each of the persons mentioned in such authorization or requisition.

17.36 RECTIFICATION OF MISTAKES [SECTION 154]

(1) **Manner of rectification of a mistake apparent from the record** - 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 u/s 206CB(1)
- Rectification of mistake apparent from the record
- Amend any intimation or deemed intimation u/s 143(1)
- Amend any intimation u/s 200A(1)

(2) **Mistake apparent from the record** - The jurisdiction of any authority under the Act to make an order under section 154 depends upon the existence of a mistake apparent on the face of the record.

(i) **Mistake apparent from the record may be a mistake of fact as well as mistake of law** - For instance, the treatment of non-agricultural income as agricultural income and granting exemption in respect of such income is an obvious mistake of law which could be rectified under section 154.
(ii) **Mere change of opinion cannot be basis for rectification** - A mere change of opinion, however, cannot be the basis on which the same or the successor Assessing Officer can treat a case as one of rectification of mistake. A mistake is one apparent from the record in case, where it is a glaring, obvious, patent or self-evident. Mistake, which has to be discovered by a long drawn process of reasoning or examination or arguments on points, where there may be two opinions, cannot be said to be mistake or error apparent from the record.

(iii) **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.

(iv) **Retrospective amendment of law** - could also lead to rectification if an order is plainly and obviously inconsistent with the specific and clear provision, as amended retrospectively.

(3) **Doctrine of Partial Merger** - Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to a rectifiable order, the authority passing such order may, amend the order in relation to any matter other than the matter which has been so considered and decided.

(4) **Amendment may be suo motu or the same may be brought to notice by the assessee or deductor** - The concerned authority may make an amendment on its own motion. However, he should mandatorily make the amendment for rectifying any such mistake which has been brought to its notice by the assessee or the deductor. Where the authority concerned is the Deputy Commissioner (Appeals) or the Commissioner (appeals), the mistake can be pointed out by the Assessing Officer also.

(5) **Opportunity of being heard to be given to the assessee or deductor before enhancing an assessment or reducing a refund** - 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, shall not be made unless the authority concerned has given notice to the assessee or the deductor of its intention so to do and has allowed the assessee or the deductor a reasonable opportunity of being heard.

(6) **Action to be taken by the Assessing Officer depending upon the effect of the amendment made**

<table>
<thead>
<tr>
<th>Case</th>
<th>Action to be taken by A.O.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Where an amendment is made under this section</td>
<td>An order shall be passed in writing by the authority concerned</td>
</tr>
<tr>
<td>(ii) Where any such amendment has the effect of reducing the assessment, or otherwise reducing the liability of the</td>
<td>The Assessing Officer shall make any refund due to such assessee or the deductor</td>
</tr>
</tbody>
</table>
(7) **Time limit for rectification** - Except in cases which are specifically covered by section 155 or section 186(4) dealing with cancellation or registration, no amendment under this section shall be made after the expiry of **four years from end of the financial year in which the order sought to be amended was passed**.

Where an application for amendment is made by the assessee or by the deductor or by the collector, the income-tax authority shall pass an order within a period of **six months from the end of the month in which the application is received** by it, either making the amendment or refusing the claim.

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### 17.37 OTHER AMENDMENTS [SECTION 155]

Where any assessment made in respect of any assessment year is required to be amended on account of any specific provisions in the Act mentioned hereunder, such an amending order can be passed at any time within 4 years from the end of the year in which such provision is attracted.

(1) **Rectification of partner’s assessment consequent to disallowance of remuneration in the hands of the firm [Sub-section (1A)]** - Where a partner is assessed in respect of any remuneration from a firm under section 28(v) and later in the assessment or reassessment of the firm or reduction or enhancement made in the income of the firm under sections 154/155/250/254/263/264 or any order passed under section 245D on the application made by the firm, such remuneration is found not deductible under section 40(b), the assessment
order of the partner shall be amended to exclude such remuneration which is not deductible in the firm’s case. This is in view of the proviso to section 28(v) which states that the remuneration disallowed in the firm’s case cannot be charged to tax in the partner’s case.

The four year period for making the amendment would be reckoned from the end of the financial year in which the final order was passed in the case of the firm.

(2) **Rectification of member’s assessment consequent to enhancement or reduction of income of the AOP/BOI [Sub-section (2)]** - The amendment of the assessment of a member of an AOP/BOI consequent upon the assessment or reassessment or any enhancement or reduction in the income of the AOP/BOI as a result of an order in appeal, reference, revision or rectification or as a result of an order made by the Settlement Commission

The four year period for making the amendment would be reckoned from the end of the financial year in which the final order was passed in the case of the AOP/BOI.

(3) **Rectification of assessment consequent to disallowance of excess loss or depreciation allowed [Sub-section (4)]** – The amendment resulting from any proceedings initiated under section 147 on account of re-computation of total income, where excessive loss or depreciation allowance had been allowed or losses had been set off and carried forward under the different heads.

The four year period for making the amendment would be reckoned from the end of the financial year in which the order was passed under section 147.

(4) **Rectification necessitated on account of capital gains, which were not charged to tax by virtue of section 47(iv) or 47(v), becoming chargeable under section 47A [Sub-section (7B)]** - Under the provisions of section 47A, capital gains which were not charged to tax by virtue of section 47(iv) or (v) may be deemed to be chargeable in certain circumstances. The Assessing Officer, may, accordingly, make an order of amendment at any time before the expiry of four years from the end of the previous year in which the relevant capital asset was converted into or treated as stock-in-trade or, as the case may be, the parent company ceasing to hold the entire share capital of the subsidiary company before the expiry of 8 years from the date of transfer.

(5) **Rectification to give effect to TDS/TCS not deducted while computing tax liability [Sub-section (14)]** - Where TDS/TCS certificates are not furnished along with the return of income and such certificates are produced before the Assessing Officer within two years from the end of the assessment year in which the income covered by the TDS/TCS certificate is assessable, the Assessing Officer can amend the order of assessment or intimation or deemed intimation under section 143(1).

However, such rectification under section 155(14) is possible only if the income from which tax has been deducted or the income on which tax has been collected has been disclosed in the return of income filed by the assessee for the relevant assessment year.
Rectification to give effect to credit for income-tax paid outside India [Sub-section (14A)] - Where in the assessment for any previous year or in any intimation or deemed intimation under section 143(1) for any previous year,

- credit for income-tax paid in any country outside India or a specified territory outside India referred to in section 90, section 90A or section 91 has not been given on the ground that the payment of such tax was under dispute, and if subsequently such dispute is settled; and

- the assessee, within six months from the end of the month in which the dispute is settled, furnishes to the Assessing Officer evidence of settlement of dispute and evidence of payment of such tax along with an undertaking that no credit in respect of such amount has directly or indirectly been claimed or shall be claimed for any other assessment year,

the Assessing Officer shall amend the order of assessment or any intimation or deemed intimation under section 143(1), as the case may be, and the provisions of section 154 shall, so far as may be, apply thereto.

However, the credit of tax which was under dispute shall be allowed for the year in which such income is offered to tax or assessed to tax in India.

Rectification consequent to revision of full value of consideration in appeal or revision [Sub-section (15)] - Where the Assessing Officer adopts stamp duty as full value of consideration under section 50C and later, such value is revised in any appeal or revision, the Assessing Officer shall amend the assessment order to compute the capital gain by taking the full value of consideration to be the value so revised in such appeal or revision. The period of four years shall be reckoned from the end of the previous year in which the order revising the value was passed in that appeal or revision.

Recomputation of capital gains on account of reduction of any compensation in a compulsory acquisition by any Court, Tribunal or any other authority [Sub-section (16)] - Where capital gains is recomputed on account of any reduction of any compensation in a compulsory acquisition by any Court, Tribunal, or any other authority, the Assessing Officer shall amend the assessment order so as to compute the capital gain by taking the compensation or consideration as reduced by any court, Tribunal or other authority. The four year time period shall be reckoned from the end of the previous year in which the order reducing the compensation was passed by the court, Tribunal or other authority.

Rectification consequent to revoking of patent or exclusion of name of the assessee from patents register as patentee [Sub-section (17)] - Where deduction under section 80RRB is allowed and subsequent to the allowance of such deduction in respect of any patent, the Controller or the High Court passes an order under the Patents Act, 1970 revoking the patent or excluding the name of the assessee from the Patents Register as patentee in respect of that patent.
For the purpose of amending the order, the period of 4 years is to be reckoned from the end of the previous year in which such order of the Controller or High Court, as the case may be, is passed.

17.38 NOTICE OF DEMAND [SECTION 156]

When any tax, interest, penalty or fine or any other sum is payable consequent to any order passed under this Act, the Assessing Officer shall serve upon the assessee a notice of demand in the prescribed form, specifying the sum so payable.

The Apex Court has, in Sri Mohan Wahi v. CIT (2001) 248 ITR 799, held that failure to serve notice of demand renders the recovery proceedings invalid.

An intimation under section 143(1) or section 200A(1) or section 206CB(1) would be deemed to be a notice of demand for the purpose of section 156, where any sum is determined to be payable by the assessee under section 143(1) or by the deductor under section 200A(1) or by the collector under section 206CB(1).

Note - As per section 292BB, where an assessee had appeared in any proceedings or co-operated in any enquiry relating to an assessment or reassessment, it shall be deemed that any notice required to be served upon him, has been duly served upon him in time in accordance with the provisions of the Act and such assessee shall be precluded from raising any objection in any proceeding or enquiry 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. However, the above provision shall not be applicable where the assessee has raised such objection before the completion of such assessment or reassessment.

17.39 INTIMATION OF LOSS [SECTION 157]

When, in the course of the assessment of total income of any assessee, it is established that a loss has taken place which the assessee is entitled to have carried forward and set-off under the provisions of section 72(1)/73(2)/74(1)/74(3)/74A(3), the Assessing Officer shall notify the assessee by an order in writing the amount of the loss as computed by him for this purpose.
Question 1

Teachwell Education is a trust approved under section 10(23C)(vi) which runs various educational institutions. During the course of assessment under section 143(3), the Assessing Officer finds that the trust has carried out its activities in contravention of the section under which it was approved for exemption. Hence, the Assessing Officer wants to pass an order without giving exemption under section 10, which the assessee objects. You are required to examine the following with respect to the provisions of Income-tax Act, 1961.

(a) Whether the Assessing Officer can pass an order without giving exemption under section 10?

(b) Can the Assessing Officer get any additional time limit in completing this assessment?

Answer

(a) As per the first proviso to section 143(3), in the case of an institution approved under, *inter alia*, section 10(23C)(vi), which is required to furnish the return of income under section 139(4C), the Assessing Officer shall not pass an order of assessment under section 143(3) without giving effect to the provisions of section 10, unless he is of the view that the activities of the institution are being carried on in contravention to the provisions of that section and:

(1) he has intimated the Central Government or the prescribed authority, which had earlier approved the concerned institution, about the contravention of the relevant provisions by the institution; and

(2) the approval granted to such institution has been withdrawn or notification in that respect has been rescinded.

Therefore, in the aforesaid case, the Assessing Officer can pass an assessment order without giving exemption under section 10 to Teachwell Education, which is an educational institution approved under section 10(23C)(vi), only if he has intimated the contravention made by Teachwell Education to the Central Government or the prescribed authority, as the case may be, and its approval under section 10(23C)(vi) is withdrawn.

(b) As per *Explanation 1* to section 153, in case the Assessing Officer intimates the contravention of provisions of section 10(23C)(vi) to the Central Government or the prescribed authority, the period commencing from the date of intimation of such contravention by the Assessing Officer and ending on the date on which the copy of the order of withdrawing the approval under section 10(23C)(vi) is received by the Assessing Officer, shall be excluded for computing the period of limitation for completing the assessment.

Further, in case the time limit available to the Assessing Officer for passing an assessment order, after such exclusion, is less than 60 days, such remaining period of assessment shall be deemed to have been extended to 60 days.
Therefore, the Assessing Officer will get the above mentioned additional time for completing the assessment of Teachwell Education.

**Question 2**

*State with reasons whether return of income is to be filed in the following cases for the Assessment Year 2020-21:*

(i) Mr. X, a resident individual, aged 80 years, has a total income of `2,85,000. He has claimed deduction of `1,50,000 under section 80C. Long-term capital gains of `80,000 is not taxable by virtue of the exemption available upto specified threshold under section 112A.

Would your answer change if Mr. X has incurred `1,05,000 towards payment of electricity bills for F.Y.2019-20?

(ii) ABC, a partnership firm, has a loss of `10,000 during the previous year 2019-20.

(iii) A registered association, eligible for exemption under section 10(23B), has income from house property of `2,60,000.

(iv) Mr. Y, aged 45 years, an employee of ABC (P) Ltd, draws a salary of `4,90,000 and has income from fixed deposits with bank of `10,000.

**Answer**

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Is filing of return required?</th>
<th>Reason</th>
</tr>
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<tbody>
<tr>
<td>(i)</td>
<td>No</td>
<td>As per the provisions of section 139(1), every person, whose total income without giving effect to the provisions of Chapter VI-A exceeds the maximum amount not chargeable to tax, is required to furnish the return of income for the relevant assessment year on or before the due date. The gross total income of Mr. X before giving effect to deduction of <code>1,50,000 under section 80C is </code>4,35,000, which is less than the basic exemption limit of <code>5,00,000 applicable to an individual aged 80 years or more. Therefore, Mr. X need not furnish his return of income for the A.Y. 2020-21. *Note – Yes, the answer would change, since Mr. X has incurred expenditure of an amount exceeding </code>1 lakh towards consumption of electricity. Hence, he would have to file his return for A.Y.2020-21 on or before the due date u/s 139(1).*</td>
</tr>
<tr>
<td>(ii)</td>
<td>Yes</td>
<td>As per section 139(1), it is mandatory for a firm to furnish its return of income or loss on or before the specified due date. Therefore, M/s ABC has to furnish its return of loss for the A.Y. 2020-21 on or before the due date under section 139(1), even if it has incurred a loss.</td>
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<tr>
<td>(iii)</td>
<td>Yes</td>
<td>As per section 139(4C), every institution referred to, <em>inter alia</em>, in section 10(23B), whose total income without giving effect to the provisions of section 10 exceeds the maximum amount not chargeable to tax, is required</td>
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to furnish the return of income for the relevant assessment year on or before the due date under section 139(2).

In the above case, the registered association has income from house property of ₹ 2,60,000 before exemption under section 10, which exceeds the basic exemption limit of ₹ 2,50,000. Therefore, it is under an obligation to furnish its return of income for the A.Y. 2020-21.

(iv) Yes

As per the provisions of section 139(1), every person, whose gross total income exceeds the maximum amount not chargeable to tax, is required to furnish the return of income for the relevant assessment year on or before the due date. Mr. Y’s salary income is ₹ 4,40,000 (i.e., ₹ 4,90,000 less standard deduction of ₹ 50,000). The gross total income of Mr. Y is ₹ 4,50,000 (₹ 4,40,000 + ₹ 10,000) which exceeds the basic exemption limit of ₹ 2,50,000 applicable to an individual. Therefore, Mr. Y has to furnish his return of income for the A.Y. 2020-21.

Question 3

The Assessing Officer issued a notice under section 142(1) on the assessee on 24th December, 2019 calling upon him to file return of income for Assessment Year 2019-20. In response to the said notice, the assessee furnished a return of loss and claimed carry forward of business loss and unabsorbed depreciation. State whether the assessee would be entitled to carry forward as claimed in the return.

Answer

As per the provisions of section 139(3), any person who has sustained loss under the head ‘Profit and gains of business or profession’ is allowed to carry forward such a loss under section 72(1) or section 73(2), only if he has filed the return of loss within the time allowed under section 139(1). Also, the provisions of section 80 specify that a loss which has not been determined as per the return filed under section 139(3) shall not be allowed to be carried forward and set-off under, inter alia, section 72(1) (relating to business loss) or section 73(2) (losses in speculation business) or section 74(1) (loss under the head “Capital gains”) or section 74A(3) (loss from the activity or owning and maintaining race horses) or section 73A (loss relating to a “specified business”). However, there is no such condition for carry forward of unabsorbed depreciation under section 32.

In the given case, the assessee has filed its return of loss in response to notice under section 142(1). As per the provisions stated above, the return filed by the assessee in response to notice under section 142(1) is a belated return and therefore, the benefit of carry forward of business loss under section 72(1) or section 73(2) or section 73A shall not be available. The assessee shall, however be entitled to carry forward the unabsorbed depreciation as per provisions of section 32(2).

Question 4

The regular assessment of MNO Ltd. for the Assessment Year 2018-19 was completed under section 143(3) on 13th March, 2020. 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:

(i) State, with reasons, whether the Assessing Officer can issue notice under section 148 on the basis of audit objection of the Revenue Audit team.

(ii) 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?

Answer

(i) Section 147 states that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section.

The Assessing Officer should, therefore, have reason to believe that income chargeable to tax has escaped assessment. The belief should be that of the Assessing Officer and not of the revenue audit team.

Further, the Income-tax Act, 1961 does not confer jurisdiction on the Assessing Officer to change its opinion on the interpretation of a particular provision earlier adopted by it. If the issue had already been considered earlier during the course of scrutiny assessment and the Assessing Officer had come to a conclusion that no disallowance of interest paid by the assessee is required, even though loans had been given to sister concern without any interest, the same issue cannot be the basis of reassessment, merely because the revenue audit team takes a different view.

The Supreme Court, in ACIT v. ICICI Securities Primary Dealership Ltd. (2012) 348 ITR 299, held that re-opening of the assessment by the Assessing Officer on the ground of change of opinion is not valid.

Therefore, the Assessing Officer cannot issue notice under section 148 solely on the basis of audit objection of the Revenue Audit team.

If the Assessing Officer has acted only under compulsion of the audit party and not independently, the action of reopening would be invalid.

(ii) The option open to the Revenue is initiation of proceedings under 263, by the jurisdictional Commissioner. He has the power to call for and examine the records, if he is of the opinion that the order passed by the Assessing Officer under section 143(3) is erroneous in so far as it is prejudicial to the interests of the Revenue.

However, where the Assessing Officer has considered the issue in the original assessment and come to a conclusion that no disallowance of interest is called for, the Commissioner

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cannot initiate revisionary proceedings, merely because he holds a different view. Only where
the view taken by the Assessing Officer is unsustainable in law, the Commissioner will be
justified in initiating the revisionary proceedings under section 263. It was so held in CIT vs.

Mere audit objection and possibility of a different view are not sufficient to conclude that the
order of the Assessing Officer is erroneous or prejudicial to the interest of revenue.

Question 5

State whether the following assessee have to file return of income and if so, the due date for the
assessment year 2020-21:

(i) A registered trade union having income from let out property of ₹ 1,00,000.
(ii) A public trust hospital having an aggregate annual receipt of ₹ 205 lacs and availing exemption
     of ₹ 2,20,000 under section 10(23C)(via) with total income of ₹ 1,10,000.

Answer

(i) A registered trade union is having income from house property, which is exempt under section
    10(24).

    Section 139(4C) mandates filing of return only when the total income exceeds the maximum
    amount which is not chargeable to tax without giving effect to the provisions of section 10. In
    this case, even without giving effect to section 10(24), the total income of the registered trade
    union is below basic exemption limit and therefore, there is no mandatory requirement to file
    the return of income.

(ii) Since the total income without giving effect to the exemption under section 10(23C)(via) is
     ₹ 3,30,000, which exceeds ₹ 2,50,000, the trust has to file its return of income by 30th

Question 6

Dishant received a notice under section 148 from the Assessing Officer for A.Y. 2016-17 on the
ground that depreciation on certain assets was allowed in excess. The Assessing Officer recorded
the reason for reopening. The original assessment was completed under section 143(3). In course
of reassessment proceeding, the Assessing Officer also disallowed certain sum under section 14A
in respect of expenses purported to be in relation to dividend from companies and tax-free interest.
However, the Assessing Officer did not record the reason for applying the provisions of section 147
in respect of the issue of disallowance under section 14A and passed the order disallowing the
excess depreciation and also certain sum under section 14A. Dishant contended that the Assessing
Officer can make disallowance under section 14A, since the same was not the reason for reopening
the assessment. Discuss the correctness of Dishant’s contention.
**Answer**

Explanation 3 to section 147 permits the Assessing Officer to assess or reassess the income in respect of any issue (which has escaped assessment) which comes to his notice subsequently in the course of proceedings under section 147, even though the reason for such issue does not form part of the reasons recorded under section 148(2).

Therefore, in the instant case, the Assessing Officer has the power to disallow expenses under section 14A in addition to disallowing excess depreciation for which notice under section 148 was issued even though the reason for issue relating to disallowance under section 14A was not recorded under section 148(2).

Hence, the contention of Dishant is not correct.

**Question 7**

In the proceedings initiated under section 153A, the assessment order passed in respect of Mr. Simbu pertaining to a particular assessment year was annulled by the Income-tax Appellate Tribunal in its order passed on 28.1.2020. The same was received on 28.2.2020 by the jurisdictional Commissioner of Income-tax. Does the Department have any power to complete the assessment subsequent to such annulment? If yes, within what time limit?

**Answer**

As per section 153A(2), if any proceedings initiated under section 153A or any order of assessment or reassessment made under section 153A(1) has been annulled in any appeal or other legal proceeding, the abated assessment or reassessment relating to any assessment year shall stand revived with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner. If the order of annulment is set aside, such revival shall cease to have effect.

The time limit for completion of such assessment or reassessment shall be one year from the end of the month in which the abated assessment revives or within the period specified in section 153B(1) [i.e., 21 months\(^4\) from the end of the financial year in which the last of authorisations for search or requisition was executed], whichever is later.

**Question 8**

What will be the consequences when Mr. Raghav made payment of ₹ 75,000 in cash to a travel agent for his travel to Saudi Arabia to be undertaken for business purposes by quoting intentionally the wrong PAN? Would your answer be different if such cash payment was made for his travel to Nepal, instead of Saudi Arabia?

\(^4\) Assuming that the last of authorisations for search/requisition was executed prior to previous year 2018-19.
Answer

If a person who is required to quote his permanent account number in any document referred to in section 139A(5)(c), quotes a number which is false, and which he either knows or believes to be false or does not believe to be true, the Assessing Officer may direct that such a person shall pay by way of penalty a sum of ₹ 10,000 under section 272B(2).

In the given case, if Mr. Raghav travels to Saudi Arabia and pays his travel agent cash in excess of ₹ 50,000, such a transaction is covered by section 139A(5)(c) read with Rule 114B and therefore, Mr. Raghav has to quote his PAN. Since Mr. Raghav has misquoted his PAN, penalty under section 272B(2) is leviable. Mr. Raghav has to be given an opportunity of being heard in the matter. If Mr. Raghav is not able to prove that there was a reasonable cause for the said failure, penalty under section 272B(2) would be imposable.

The answer would remain the same even if such cash payment was made for his travel to Nepal.

Question 9

For facilitating expeditious resolution of disputes relating to international transactions involving transfer pricing and foreign companies, the Income-tax Act, 1961, has provided for "alternate dispute resolution mechanism". In this context, you are required to answer the following:

(i) What meanings have been assigned to "dispute resolution panel" and the "eligible assessee" under this mechanism?

(ii) When can a grievance for resolution be filed by an assessee?

(iii) What evidences are being considered by the panel to redress the grievance of the assessee?

Answer

(i) The term “Dispute Resolution Panel” has been defined to mean a collegium comprising of three Principal Commissioners or Commissioners of Income-tax constituted by the Board for this purpose.

The term “Eligible Assessee” means any person in whose case the variation referred to in section 144C(1) in the income or loss returned arises as a consequence of the order of the Transfer Pricing Officer passed under section 92CA(3) and any foreign company.

(ii) The Assessing Officer shall forward a draft of the proposed order of assessment to the eligible assessee and on receipt of such order, the eligible assessee shall, within thirty days of the receipt of the draft order, file his acceptance of the variations to the Assessing Officer or file his objections, if any, to such variation, with the Dispute Resolution Panel and the Assessing Officer.

(iii) The Dispute Resolution Panel shall, in a case where any objections are received, take into consideration:-

(a) the draft order
(b) the objections filed by the assessee
(c) the evidence furnished by the assessee
(d) the report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority
(e) the records relating to the draft order
(f) the evidence collected by, or caused to be collected by it
(g) the result of any enquiry made by or caused to the made by it,
and issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

**Question 10**

The Assessing Officer has the power to make an assessment to the best of his judgment, in certain situations. What are they?

**Answer**

Under section 144, the Assessing Officer, after taking into account all relevant material which he has gathered, is under an obligation to make an assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee in the following cases –

(1) Where any person fails to make the return under section 139(1) and has not filed a belated return under section 139(4) or a revised return under section 139(5).

(2) Where any person fails to comply with all the terms of a notice issued under section 142(1) or fails to comply with a direction issued under section 142(2A) for getting the accounts audited.

(3) Where any person, having made a return, fails to comply with all the terms of a notice issued under section 143(2).

Further, section 145(3) of the Income-tax Act, 1961 permits the Assessing Officer to make an assessment in the manner provided in section 144:

(i) where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee; or

(ii) where the method of accounting under section 145(1) has not been regularly followed by the assessee;

(iii) where the income has not been computed in accordance with “Income Computation and Disclosure Standards” notified by the Central Government under section 145(2).

**Question 11**

The assessment of CNK Associates, a partnership firm, for the assessment year 2017-18 was made
under section 143(3) on 31st July, 2019. The Assessing Officer made two additions to the income of the assessee viz. (a) addition of ₹ 2 lacs under section 40(a)(ia) due to non-furnishing of evidence of payment of TDS and (ii) addition of ₹ 5 lacs on account of unexplained cash credit. The assessee contested addition on account of unexplained cash credit in appeal to the Commissioner (Appeals). The appeal was decided in January, 2020 against the assessee. The assessee approaches you for your suggestion as to whether it should apply for revision to the Commissioner under section 264 or rectification to the Assessing Officer under section 154 as regards disallowance under section 40(a)(ia). What should be your suggestion?

Answer

The Commissioner cannot exercise his power of revision under section 264 where the order sought to be revised has been made the subject of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal [Section 264(4)], even if the relief claimed in the revision is different from the relief claimed in the appeal. This was the view of the Supreme Court in the case of Hindustan Aeronautics Limited vs. CIT (2000) 243 ITR 808. It is not open to the assessee to seek recourse to revision under section 264 after the appeal is decided. Therefore, although the matter of addition of ₹ 2 lacs under section 40(a)(ia) was not taken before the Commissioner (Appeals), the assessee, CNK Associates cannot apply for revision under section 264 in respect of the same.

Under section 154(1A), where any matter had been considered and decided in any proceeding by way of appeal or revision, rectification of such matter cannot be done by the Assessing Officer. However, in respect of the matter which has not been considered and decided in the appeal or revision, the order of the Assessing Officer can be rectified under section 154. Thus, the assessee can apply to the Assessing Officer for rectification of the order in respect of addition under section 40(a)(ia), as this matter has not been considered and decided in any proceeding by way of appeal or revision.

In view of above, the assessee, CNK Associates should seek rectification under section 154.

Question 12

Examine critically in the context of provisions of the Act “Can the Assessing Officer issue notice under section 148 to reopen the same assessment order on the same grounds for which the CIT had issued notice under section 263 of the Act”?

Answer

The Assessing Officer cannot issue notice under section 148 to reopen the same assessment order on the same grounds for which the Commissioner had issued notice under section 263 of the Income-tax Act, 1961, since the third proviso to section 147 specifically provides that the Assessing Officer may assess or reassess an income which is chargeable to tax and has escaped assessment, other than the income involving matters which are the subject matter of any appeal, reference or revision. Therefore, if the income relates to a matter which is the subject matter of revision under section 263, then the Assessing Officer cannot issue notice under section 148 to reopen the assessment order.
Question 13

Is the Assessing Officer empowered to assess or reassess an income which is chargeable to tax and has escaped assessment, in a case which is pending before the Appellate Tribunal? Discuss.

Answer

As per third proviso to section 147, the Assessing Officer may assess or reassess an income which is chargeable to tax and which has escaped assessment, other than the income involving matters which are the subject matter of any appeal, reference or revision. Therefore, in respect of the matters which are the subject matter of an appeal before the Appellate Tribunal, it is not possible for the Assessing Officer to initiate proceeding under section 147. However, in respect of other matters, which are not the subject matter of the appeal, the Assessing Officer can initiate proceeding under section 147.

Question 14

A search was conducted under section 132 in the business premises of Harish on 15th December, 2019. At that time, assessments under section 143(3) for A.Y. 2017-18 and A.Y. 2018-19 and reassessment proceeding under section 147 for A.Y. 2016-17 were pending before the Assessing Officer.

(i) What are the assessment years for which notice can be issued for making post-search assessment?

(ii) What would be the fate of pending assessments and reassessment?

(iii) What would be the effect, if the post-search assessment orders are annulled by the Income-tax Appellate Tribunal?

Answer

(i) The notice under section 153A can be issued for six assessment years preceding the assessment year relevant to the previous year in which the search is conducted. In this case, the search is conducted in the previous year 2019-20, the relevant assessment year for which is A.Y. 2020-21. Therefore, notice can be issued for the six preceding assessment years i.e. for assessment years 2014-15 to 2019-20.

Further, notice for assessment or reassessment can be issued by Assessing Officer for the relevant assessment year or years (i.e. for A.Y.2010-11 to A.Y.2013-14) if the following conditions are satisfied:

(a) The Assessing Officer has in his possession, books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount ₹ 50 lakhs or more in the relevant assessment year or in aggregate in the relevant assessment years.
(b) The income so referred above has escaped assessment for such year or years; and
(c) The search under section 132 is initiated or requisition under section 132A is made on or after 01.04.2017 (This condition is satisfied since the search has taken place in December, 2019).

Note - The expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

"Asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.

(ii) As per section 153A, the assessment or reassessment relating to any assessment year, falling within the above period of six assessment years and for the relevant assessment year or years, pending on the date of initiation of the search under section 132, shall abate. In other words, they will cease to be applicable. Therefore, the assessments under section 143(3) for assessment years 2017-18 and 2018-19 and the reassessment proceeding under section 147 for assessment year 2016-17 shall abate.

(iii) Section 153A provides that where the post-search assessment order is annulled in any appeal or any other legal proceeding, the abated assessment and reassessment proceedings shall stand revived. Therefore, the assessments under section 143(3) relating to assessment years 2017-18 and 2018-19 and the reassessment proceeding relating to assessment year 2016-17, which abated on initiation of search, shall stand revived with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner.

Question 15

A search was conducted under section 132 in the business premises of Sanskar on 5th March, 2019. The search was concluded by executing last of authorisation for search on 21st March, 2019. Since the search is concluded in the financial year 2018-19, and other conditions are also fulfilled, the Assessing Officer issued notice under section 153A on Sanskar for preceding ten Assessment Years prior to the Assessment Year relevant to the previous year 2018-19. Thus, he issued the notice from A.Y. 2009-10 to A.Y.2018-19. Discuss the correctness of the action taken by Assessing Officer.

Answer

As per section 153A, the Assessing Officer can issue the notice to file a return in respect of six assessment years and for the relevant assessment year or years immediately preceding the assessment year relevant to the previous year in which the search was conducted under section 132 or requisition was made under section 132A.

However, no notice for assessment or reassessment shall be issued by Assessing Officer for the relevant assessment year or years unless:
(a) He has, in his possession, books of account or other documents or evidence which reveal that the income, represented in the form of assets, which has escaped assessment amounts to or is likely to amount ₹ 50 lakhs or more in the relevant assessment year or in aggregate in the relevant assessment years.

(b) The income so referred above has escaped assessment for such year or years.

(c) The search under section 132 is initiated or requisition under section 132A is made on or after 01.04.2017

The expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

Thus, it is clear that the Assessing Officer can issue the notice in respect of four assessment years which fall beyond six assessment years, subject to fulfillment of aforesaid conditions. As per condition (c) above, search must be initiated on or after 01.04.2017.

In the given case, Assessing Officer has initiated the search on 05.03.2019 and concluded on 21.03.2019. Therefore, the condition given in (c) is satisfied. Assuming that conditions given in (a) and (b) are also satisfied, the Assessing Officer could issue the notice for ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted, i.e. from A.Y.2013-14 to A.Y. 2018-19 as well as the relevant assessment years, namely, A.Y. 2009-10 to A.Y. 2012-13

Hence, the action of Assessing Officer in issuing the notice under section 153A for A.Y.2009-10 to A.Y.2018-19, is correct.

Question 16

Examine whether the Assessing Officer has the power to make any adjustment to income disclosed by the assessee in the return of income in course of processing the return under section 143(1)?

Answer

The procedure to be followed for summary assessment is contained in section 143(1). As per section 143(1), the total income or loss of an assessee shall be computed after making the following adjustments to the returned income:

(i) any arithmetical error in the return; or
(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return.
(iii) disallowance of loss claimed, if return is filed beyond due date u/s 139(1)
(iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return
(v) disallowance of deduction claimed under section u/s 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or 80-IE, if return is filed beyond due date u/s 139(1)
No such adjustment shall be made unless as intimation is given to the assessee of such adjustment either in writing or electronic mode. Further, Assessing Officer shall make any adjustment after considering the response received from the assessee, if any. Where no response is received within 30 days of the issue of such notice, the above adjustment can be made.

For the purpose of section 143(1), “an incorrect claim apparent from any information in the return” means such claim on the basis of an entry, in the return of income:

(i) of an item, which is inconsistent with another entry of the same or some other item in such return;
(ii) in respect of which, the information required to be furnished under the Income-tax Act, 1961 to substantiate such entry, has not been so furnished;
(iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may be expressed as monetary amount or percentage or ratio or fraction.

**Question 17**

*Can the Assessing Officer complete the assessment of income from international transactions in disregard of the order passed by the Transfer Pricing Officer by accepting the contention of the assessee?*

**Answer**

Section 92CA(4) provides that the order of the Transfer Pricing Officer determining the arm’s length price of an international transaction is binding on the Assessing Officer and the Assessing Officer shall proceed to compute the total income in conformity with the arm’s length price determined by the Transfer Pricing Officer.

Therefore, the Assessing Officer cannot complete the assessment of income from international transactions in disregard of the order of Transfer Pricing Officer and on the basis of contention raised by the assessee.

**Question 18**

*Tai Ltd. filed its return of income for assessment year 2019-20 on 26th September, 2019. The return is selected for regular assessment under section 143(3) for which notice under section 143(2) is served on the company on 3rd October, 2020. The company responded to the notice under section 143(2). Examine whether the service of the notice is within time and if not, whether the assessment order can be challenged by the assessee.*

**Answer**

The time limit for service of notice under section 143(2) is six months from the end of the financial year in which the return of income was furnished by the assessee. The return of income for assessment year 2019-20 was filed by the assessee on 26th September, 2019. Therefore, the notice under section 143(2) has to be served by 30th September, 2020. However, the notice was served on the assessee only on 3rd October, 2020. Hence, the notice issued under section 143(2) is time-barred.
However, as per section 292BB, where an assessee had appeared in any proceedings or co-operated in any enquiry relating to an assessment or reassessment, it shall be deemed that any notice required to be served upon him, has been duly served upon him in time in accordance with the provisions of the Act and such assessee shall be precluded from raising any objection in any proceeding or enquiry 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.

The above provision shall not be applicable where the assessee has raised such objection before the completion of such assessment or reassessment. Therefore, in the instant case, if the assessee, Tai Limited, had raised an objection to the proceeding, on the ground of non-service of the notice under section 143(2) upon it on time, then, the validity of the assessment order can be challenged. In absence of such objection, the assessment order cannot be challenged.

Question 19

In the case of Mr. Rajesh, a summary assessment was made under section 143(1) for assessment year 2016-17 without calling him. Thereafter, Mr. Rajesh has received a notice under section 148 on 6th April, 2019 for reopening of assessment. Can Mr. Rajesh challenge the legality of the notice on the ground of change of opinion?

Answer

Under the scheme of section 143(1), only the adjustments relating to any arithmetical error in the return, incorrect claim which is apparent from any information in the return, disallowance of loss claimed where return of income for set-off of loss is claimed was filed beyond the due date under section 139(1), disallowance of expenditure indicated in the audit report but not taken into account in computing total income in the return and disallowance of deduction claimed under section 10AA, sections 80-IA to 80-IE, where return is furnished beyond due date. In short, what is permissible is only correction of errors apparent on the basis of the of the return and tax audit report filed. Therefore, the intimation given under section 143(1) is only a preliminary assessment, commonly referred to as a summary assessment without calling the assessee. The same cannot be treated as an order of assessment under section 143(3). Since there has been no assessment under section 143(3) in this case, the question of change of opinion does not arise.

Therefore, the assessee cannot challenge the legality of the notice issued under section 148 reopening the assessment on the ground of change of opinion in a case where no assessment is made under section 143(3). This inference is supported by the Supreme Court ruling in ACIT vs. Rajesh Jhaveri Stock Brokers P. Ltd. (2007) 291 ITR 500.

Question 20

Discuss the correctness or otherwise of the following proposition in the context of the Income-tax Act, 1961:

A fresh claim before the Assessing Officer can be made only by filing a revised return and not otherwise.
Answer
This proposition is correct. A return of income filed within the due date under section 139(1) or a belated return filed under section 139(4) may be revised by filing a revised return under section 139(5) where the assesse sees finds any omission or wrong statement in the original return subject to satisfying other conditions. There is no provision in the Income-tax Act, 1961, to make changes or modification in the return of income by filing a letter before the Assessing Officer. The revised return can be filed at any time before the end of the relevant assessment year or before completion of assessment, whichever is earlier. In a case where a return of income has been filed within the due date under section 139(1) or a belated return is filed under section 139(4), the only option available to the assesse e to make an amendment to such return is by way of filing a revised return under section 139(5). Therefore, a fresh claim can be made before the Assessing Officer only by filing a revised return and not otherwise. The Supreme Court, in Goetze (India) Ltd. vs. CIT (2006) 284 ITR 323, has held that there is no provision in the Income-tax Act, 1961 to allow an amendment in the return of income filed except by way of filing a revised return.

Question 21
The Assessing Officer within the powers vested in him under section 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 Assessing Officer prior to passing of such an order”. Decide the correctness of the action of the Assessing Officer.

Answer
As per the proviso to section 142(2A), the Assessing Officer shall not direct the assesse e to get the accounts so audited unless the assesse e has been given a reasonable opportunity of being heard. Therefore, in this case, the order of the Assessing Officer is not valid, since the assesse e was not given an opportunity of being heard prior to passing of such order.

Question 22
Smt. Kanti engaged in the business of growing, curing, roasting and grounding of coffee after mixing chicory had a total income of ₹6,00,000 from this business which was her only source of income during the year ended on 31.3.2020. She consults you to have an opinion whether she is required to file return of income for the A.Y. 2020-21 as per provisions of section 139(1).

Would your answer change if she had travelled to USA during the P.Y.2019-20 and incurred ₹2.20 lakhs for the same?

Answer
The clarification regarding filing of return of income by the coffee growers being individuals covered by Rule 7B of the Income-tax Rules, 1962 is given in Circular No.10/2006 dated 16.10.2006. According to the Circular, an individual deriving income from growing, curing, roasting and grounding of coffee with or without mixing chicory, would not be required to file the return of income if the aggregate of 40% of his or her income from growing, curing, roasting and grounding of coffee with or without mixing chicory and income from all other sources liable to tax in accordance with the provisions of this Act, is equal to or less
than the basic exemption limit prescribed in the First Schedule of the Finance Act of the relevant year.

In this case, Smt. Kanti has a total income of ₹ 6,00,000 from this business, which was her only source of income for P.Y. 2018-19. 40% of her total income works out to ₹ 2,40,000, which is less than the basic exemption limit of ₹ 2,50,000 in respect of an individual assessee. Therefore, Smt. Kanti is not required to file a return of income for the A.Y. 2020-21 as per the provisions of section 139(1).

If Smt. Kanti had travelled to USA during the P.Y. 2019-20 and incurred ₹ 2.20 lakhs on such travel, she would be required to mandatorily file a return of income for A.Y. 2020-21 on or before the due date u/s 139(1), even though her total income does not exceed the basic exemption limit.

Question 23

Ram, an individual, filed his return of income for the assessment year 2020-21 on 15.6.20. He later discovered that he had not claimed deduction under section 80C in the said return. He claimed the said deduction through a letter addressed to the Assessing Officer. The Assessing Officer completed the assessment without allowing the deduction claimed by Ram. Is the Assessing Officer justified in doing so?

Answer

The Supreme Court has, in Goetze (India) Ltd. v. CIT (2006) 284 ITR 323, ruled that the assessing authority has no power to entertain a claim for deduction made after filing of the return of income otherwise than by way of a revised return. In the instant case, Ram has claimed the deduction under section 80C, which he omitted to claim in the original return of income, through a letter addressed to the Assessing Officer and not by filing a revised return under section 139(5). In view of the decision of the Supreme Court cited above, the Assessing Officer was justified in completing the assessment without allowing the deduction under section 80C.

Question 24

Examine the correctness or otherwise of the following statements in the context of provisions contained in the Income-tax Act, 1961 and the decided case laws:

“The Assessing Officer is bound to allow the set-off of brought forward losses under section 72 even if the assessee has not claimed the same in the return filed”.

Answer

The statement is correct.

The Supreme Court has, in CIT v. Mahalakshmi Sugar Mills Co. Ltd. (1986) 160 ITR 920, held that it is the duty of the Assessing Officer to apply the relevant provisions of the Act for the purpose of determining the true figure of the assessee’s total income and consequential tax liability. Merely because the assessee has not claimed the set-off in the return filed, it cannot relieve the Assessing Officer of his duty to apply section 72 in the appropriate case.

As per CBDT Circular No.14 (XL-35) of 1955 dated 11.04.1955, it is the duty of the Assessing Officer to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard, they should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him.
Therefore, on the basis of the above Supreme Court ruling and the CBDT Circular, the Assessing Officer is bound to allow the set-off of brought forward losses under section 72, even if the assessee has not claimed the same in the return filed, provided the loss was determined in pursuance of a return filed under section 139(3) in any earlier previous year.

Moreover, the wording used in section 72 is “shall”, indicating that the provisions relating to set off of brought forward business loss are mandatory.

Therefore, the Assessing Officer is bound to allow the claim for set off of brought forward business losses even if the assessee has not claimed the same in the return filed.

Question 25

X, an individual, has got his books of account for the year ending 31.3.2020 audited under section 44AB. His total income for the assessment year 2020-21 is ₹5,20,000. He desires to know if he can furnish his return of income for the assessment year 2020-21 through a Tax Return Preparer.

Answer

Section 139B provides for submission of return of income through Tax Return Preparers. It empowers the Central Board of Direct Taxes (CBDT) to frame a scheme for the purpose of enabling any specified class or classes of persons to prepare and furnish their returns of income through Tax Return Preparers. Specified class or classes of persons have been defined to mean any person, other than a company or a person whose accounts are required to be audited under section 44AB or under any other existing law, who is required to furnish a return of income under the Act. Thus, companies and persons whose accounts are liable for tax audit under section 44AB do not fall within the definition of ‘specified class or classes of persons’ and consequently, cannot furnish their returns of income through Tax Return Preparers. In the instant case, the books of account of X for the year ending 31.3.2020 have been audited under section 44AB. As such, he cannot furnish his return of income for the assessment year 2020-21 through a Tax Return Preparer.

Question 26

In April, 2019, the business premises of Priyanka Ravi were searched under section 132 by the DDI, Delhi. The search was concluded on 30.04.2019 and following assets/documents were found which were not recorded in her books of accounts:

- Jewellery of ₹ 25 Lacs pertaining to P.Y. 2014-15
- Agreement for purchase of land which contains the payment of advance of ₹ 35 Lacs in cash in the P.Y.2013-14
- Shares purchased in the P.Y.2011-12 and in the P.Y.2012-13 totaling to ₹ 40 Lacs.
- Paper containing the payment of ₹ 15 Lacs in the P.Y.2009-10 and ₹ 10 Lacs in P.Y.2008-09 to a contractor for construction of residential house.

Accordingly, Assessing Officer has issued the notice for all the previous years from P.Y.2008-09 to P.Y.2018-19 under section 153A.

However, Miss Priyanka Ravi contented that the Assessing Officer cannot issue the notice under section 153A beyond six assessment years immediately preceding the assessment year relevant to
the previous year in which the search was conducted under section 132 i.e. notice can be issued upto A.Y.2014-15 (P.Y. 2013-14).

Discuss about the correctness of action of Assessing Officer and the contention of Miss Priyanka Ravi.

Answer

As per section 153A(1), issuance of notice and assessment or reassessment under the said section can also be made for an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not beyond ten assessment years from the assessment year relevant to the previous year in which search is conducted or requisition is made, provided that -

(i) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in one year or in aggregate in the relevant assessment years;

(ii) such income escaping assessment is represented in the form of asset which shall include immovable property being land or building or both, shares and securities, deposits in bank account, loans and advances;

(iii) the income escaping assessment or part thereof relates to such year or years; and

(iv) search under section 132 is initiated or requisition under section 132A is made on or after 1-4-2017.

In the light of the above amended provision, the Assessing Officer can issue the notice u/s 153A beyond six assessment years but not beyond ten assessment years from the assessment year relevant to the previous year in which search is conducted or requisition is made. Thus, in the given case, the Assessing Officer can issue notice under section 153A upto A.Y.2010-11 as she,

a. has in his possession, documents or evidence which reveals the escaped assessment amounts to ₹ 55 lacs in aggregate during the relevant four assessment years i.e. from A.Y. 2010-11 to A.Y. 2013-14

b. such income escaping assessment represents in the form of assets which includes ₹ 40 lacs being Shares purchased in P.Y. 2011-12 and P.Y. 2012-13 plus ₹ 15 lacs being payment to contractor for construction of residential house in P.Y. 2009-10 (payment of ₹ 10 lacs relevant to P.Y. 2008-09 cannot be included as it is beyond ten assessment years)

c. search was conducted after 01.04.2017.

Hence, the contention of Miss Priyanka Ravi that the Assessing Officer cannot issue the notice under section 153A beyond six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted under section 132 is incorrect.

The action of Assessing Officer is partly correct as it is possible to him to issue notice beyond six assessment years but not beyond ten assessment years from the assessment year relevant to the previous year in which search is conducted or requisition is made. Thus, he cannot issue the notice under section 153A for the A.Y.2009-10.
SIGNIFICANT SELECT CASES

1. Whether the nature of an expenditure can be considered debatable for not invoking prima facie adjustment under section 143(1)(a), where the jurisdictional High Court has taken a view that the expenditure is capital in nature even though some other High Courts have held that the same is revenue in nature?

_Deputy Commissioner of Income Tax v Raghuvir Synthetics Ltd. [2017] 394 ITR 1 (SC)_

_Facts of the case:_ The assessee is a public limited company. For the relevant assessment year, it had filed its return claiming revenue expenditure of ₹ 65,47,448 on advertisement and public issue. The company claimed that if the sum cannot be considered as revenue expenditure, then, alternatively, the said expenditure may be allowed under section 35D by way treating such expenditure as preliminary expenses. The Assessing Officer issued an intimation under section 143(1)(a) disallowing a sum of ₹ 58,92,700 incurred on public issue.

_Appellate Authorities' Views:_ The first appellate authority allowed the assessee’s appeal by holding that the concept of “prima facie adjustment” under section 143(1)(a) cannot be invoked as there could be more than one opinion on whether public issue expenses were covered by section 35D or 37. The Tribunal as well as the Division Bench of the High Court dismissed the appeal of the Revenue on the ground that the issue was debatable and hence, the expenditure cannot be disallowed while processing return of income under section 143(1)(a).

_Supreme Court’s Observations:_ The Supreme Court noted that there was divergence of opinion amongst the various High Courts on the nature of the expenses incurred on raising share capital. While the High Courts of Madras, Andhra Pradesh and Karnataka had held the preliminary expenses to be revenue in nature, High Courts of Allahabad, Himachal Pradesh, Delhi, Calcutta, Bombay, Punjab and Haryana, Gujarat and Rajasthan had held the expenses to be capital in nature.

_Supreme Court’s Decision:_ The Supreme Court held that, in the case of the assessee, the issue was not debatable. Since the registered office of the assessee is in Gujarat, the law laid down by the Gujarat High Court is binding on the assessee.

2. Whether the Assessing Officer is bound to consider the report of Departmental Valuation Officer (DVO) when it is available on record?

_Principal CIT v. Ravjibhai Nagjibhai Thesia (2016) 388 ITR 358 (Guj)_

_Facts of the case:_ The assessee sold his property for ₹ 16 lakhs. The State stamp valuation authority valued the property at ₹ 233.71 lakhs. During the course of assessment proceedings, at the request of the assessee, the Assessing Officer referred the matter of valuation to the DVO who valued the property at ₹ 24.15 lakhs. The Assessing Officer passed
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the order before the receipt of the report of the DVO by treating ₹ 217.71 lakhs (difference between ₹ 233.71 lakhs and ₹ 16 lakhs) as undisclosed income. The report of the DVO was received by the Assessing Officer after the date of assessment order but before the order was received by the assessee.

Appellate Authorities' Views: The Commissioner (Appeals) directed the Assessing Officer to compute the capital gain by taking the value given by the DVO. The Revenue carried the matter before Tribunal. The Tribunal agreed with the view of the CIT (Appeals) and dismissed the appeal. The Tribunal relied on CIT v. Dr. Indra Swaroop Bhatnagar (2012) 349 ITR 210 (All) which held that the DVO’s valuation under section 50C(2) is binding on the Assessing Officer.

Issue: Whether the Assessing Officer having made reference to the DVO must consider the report of the DVO for the purpose of assessment?

High Court's Observations: The High Court observed that when the Assessing Officer has referred the matter to DVO, the assessment has to be completed in conformity with the estimate given by the DVO. As the DVO has estimated the value of the capital asset at an amount lower than the value assessed by the stamp valuation authority, as per 50C(2), it is such valuation which is required to be taken into consideration for the purposes of assessment.

High Court’s Decision: The High Court held that capital gains has to be computed in conformity with the value so determined by the DVO.

3. Can unabsorbed depreciation be allowed to be carried forward in case the return of income is not filed within the due date?

CIT v. Govind Nagar Sugar Ltd. (2011) 334 ITR 13 (Delhi)

High Court’s Observations: On this issue, the Delhi High Court observed that, the provisions of section 80 and section 139(3), requiring the return of income claiming loss to be filed within the due date, applies to, inter alia, carry forward of business loss and not for the carrying forward of unabsorbed depreciation. As per the provisions of section 32(2), the unabsorbed depreciation becomes part of next year’s depreciation allowance and is allowed to be set-off as per the provisions of the Income-tax Act, 1961, irrespective of whether the return of earlier year was filed within due date or not.

High Court’s Decision: Therefore, in the present case, the High Court held that the unabsorbed depreciation will be allowed to be carried forward to subsequent year even though the return of income of the current assessment year was not filed within the due date.
4. Can an assessee revise the particulars filed in the original return of income by filing a revised statement of income?

*Orissa Rural Housing Development Corpn. Ltd. v. ACIT (2012) 343 ITR 316 (Orissa)*

**High Court’s Decision:** On this issue, the Orissa High Court held that the assessee can make a fresh claim before the Assessing Officer or make a change in the originally filed return of income only by filing revised return of income under section 139(5). There is no provision under the Income-tax Act, 1961 to enable an assessee to revise his income by filling a revised statement of income. Therefore, filling of revised statement of income is of no value and will not be considered by the Assessing Officer for assessment purposes.

The High Court, relying on the judgement of the Supreme Court in *Goetze (India) Ltd. v. CIT (2006) ITR 323*, held that the Assessing Officer has no power to entertain a fresh claim made by the assessee after filing of the original return except by way of filing a revised return.

5. Is a person having income below taxable limit, required to furnish his PAN to the deductor as per the provisions of section 206AA, even though he is not required to hold a PAN as per the provisions of section 139A?

*Smt. A. Kowsalya Bai v. UOI (2012) 346 ITR 156 (Kar.)*

As per the provisions of section 139A, *inter alia*, a person whose total income does not exceed the maximum amount not chargeable to income-tax is not required to apply to the Assessing Officer for the allotment of a permanent account number (PAN).

However, as per the provisions of section 206AA, notwithstanding anything contained in any other provision of this Act, any person who is entitled to receive any sum or income or amount on which tax is deductible under Chapter XVII-B, i.e., the deductee, shall furnish his PAN to the deductor, otherwise tax shall be deducted as per the provisions section 206AA, which is normally higher. It is mandatory for an assessee to furnish his PAN, despite filing Form 15G as required under section 197A, to seek exemption from deduction of tax.

The provisions of section 139A are contradictory to section 197A, due to the fact that assessees whose income was less than the maximum amount not chargeable to income-tax, were not required to hold PAN, whereas their declaration furnished under section 197A was not accepted by the bank or financial institution unless PAN was communicated as per the provisions of section 206AA. The provisions of section 206AA creates inconvenience to small investors, who invest their savings from earnings as security for their future, since, in the absence of PAN, tax was deducted at source at a higher rate.

**High Court’s Decision:** In order to avoid undue hardship caused to such persons, the Karnataka High Court, in the present case, held that it may not be necessary for such persons whose income is below the maximum amount not chargeable to income-tax to obtain PAN and in view of the specific provision of section 139A, section 206AA is not applicable to such persons. Therefore, the banking and financial institutions shall not insist upon such persons.
to furnish PAN while filing declaration under section 197A. However, section 206AA would continue to be applicable to persons whose income is above the maximum amount not chargeable to income-tax.

6. Can the Assessing Officer reopen an assessment on the basis of merely a change of opinion?

*Aventis Pharma Ltd. v. ACIT (2010) 323 ITR 570 (Bom.)*

The power to reopen an assessment is conditional on the formation of a reason to believe that income chargeable to tax has escaped assessment. The existence of tangible material is essential to safeguard against an arbitrary exercise of this power.

**High Court's Observations and Decision:** In this case, the High Court observed that there was no tangible material before the Assessing Officer to hold that income had escaped assessment within the meaning of section 147 and the reasons recorded for reopening the assessment constituted a mere change of opinion. Therefore, the reassessment was not valid.

7. Is it permissible under section 147 to reopen the assessment of the assessee on the ground that income has escaped assessment, after a change of opinion as to a loss being a speculative loss and not a normal business loss, consequent to a mere re-look of accounts which were earlier furnished by the assessee during assessment under section 143(3)?

*ACIT v. ICICI Securities Primary Dealership Ltd. (2012) 348 ITR 299 (SC)*

**Facts of the case:** In the above case, the Assessing Officer had completed the assessment of the assessee under section 143(3) after taking into consideration the accounts furnished by the assessee. After the lapse of four years from the relevant assessment year, the Assessing Officer had reopened the assessment of the assessee under section 147 on the ground that after re-look of the accounts of the relevant previous year, it was noticed that the assessee company had incurred a loss in trading in shares, which was a speculative one. Therefore, such loss can only be set off against speculative income. Consequently, the loss represents income which has escaped assessment. Accordingly, the Assessing Officer came to a conclusion that income had escaped assessment and passed an order under section 147.

**Supreme Court’s Decision:** The Supreme Court observed that the assessee had disclosed full details in the return of income in the matter of its dealing in stocks and shares. There was no failure on the part of the assessee to disclose material facts as mentioned in proviso to section 147. Further, there is nothing new which has come to the notice of the Assessing Officer. The accounts had been furnished by the assessee when called upon. Therefore, re-opening of the assessment by the Assessing Officer is clearly a change of opinion and therefore, the order of re-opening the assessment is not valid.
8. Can a notice under section 148 for a particular assessment year be issued solely on the ground that survey under section 133A was carried on at the business premises of the assessee, where nothing had been found therein which would indicate escapement of income chargeable to tax for the said assessment year?

_Hemant Traders v. ITO (2015) 375 ITR 167 (Bom)_

**Facts of the case:** In the present case, the assessee is a partnership firm and registered as a Commission agent of the onion potato market under the Agricultural Produce Market, Committee, Navi Mumbai. The firm is regularly assessed to income-tax. The firm filed a return of income for A.Y.2010-11 on October 14, 2010 along with audit report, audited Balance Sheet and Profit & Loss Account for the year ended 31.3.2010. The return was processed and intimation under section 143(1) was issued on 20.02.2012, seeking clarification. No assessment order was passed. The assessee claimed that the profit as per the return of income was accepted. Meanwhile, a survey under section 133A was carried out at the business premises of the assessee on 7th January 2011 pertaining to A.Y.2011-12. However, the survey party did not find any discrepancy in the books of account. Further, the survey report did not contain any reference to any transactions for A.Y.2010-11. In March 2014, the assessee was issued a notice under section 148 for the A.Y.2010-11 based on the said survey.

The assessee preferred a writ challenging the issue of notice on the reasoning that no satisfaction was recorded of the escapement of income in the survey report or in any other relevant material. _Ex-facie,_ the reassessment was bad in law.

**High Court's Observations:** The High Court perused the survey report which recorded that there was a group of assessee who were engaged in wholesale trading of potato on commission basis. The survey was conducted based on the allegations that these parties were resorting to hoarding of potatoes and making huge profits by fluctuating the day-to-day price of potatoes in the market. During survey, the assessee’s books of account, cash balance and stocks were physically verified and inventory prepared. The report revealed cash difference of ₹ 5,020 and the explanation given was that the same pertained to the day-to-day and miscellaneous expenditure incurred on the day of survey. The report also revealed physical stock difference of 672 bags of potatoes. The explanation for such difference was recorded.

Neither the survey report nor any other material indicated escapement of income chargeable to tax for A.Y.2010-11. The Assessing Officer had nothing before him to record his belief or satisfaction that escapement of income had taken place.

Merely because survey had taken place cannot be a ground for reopening the assessment without valid material or evidence at the time of issue of notice. Whenever there was shortage of potatoes in the market, such powers of survey were invoked. Where nothing has been found during the survey operations to indicate that income chargeable to tax has escaped
assessment, then the survey report ought not to be the basis for reopening of assessment. Something more was required in law for the Assessing Officer to exercise his powers.

**High Court Decision:** The High Court, accordingly, held that since there is absolutely no material to indicate escapement of income for the relevant assessment year, the issue of notice to initiate reassessment proceedings under section 148 on the basis of survey which had taken place is not valid. Therefore, the proceedings initiated under section 148 are quashed at the threshold itself.

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

**Godrej Industries Ltd v. B.S. Singh Dy.CIT (2015) 377 ITR 1 (Bom)**

**Facts of the case:** The assessee-company filed its return of income for the assessment year 2000-01 declaring total income as 'Nil' and a book profit of ₹ 52.70 crores. This resulted in 'book profit' being assessed to income-tax. Later, the Assessing Officer issued notice under section 148 for the reason that income chargeable to tax had escaped assessment on the ground that the provision for doubtful debts and provision for depletion of long-term investment debited to the profit and loss account were unascertained liabilities and, hence, in terms of clause (c) of the *Explanation* to section 115JA, i.e., they were to be added back to the net profit for arriving at the book profits.

The assessee preferred a writ challenging the maintainability of the notice issued under section 148.

**Revenue's Contention:** The Revenue contended that at the time of issuing the impugned notice on March 29, 2007, the position was not clear. The position became clear only when Parliament introduced/added clause (g) to the *Explanation* to section 115JA of the Act with retrospective effect from April 1, 1998, and which reads as under:

"(g) the amount or amounts set aside as provision for diminution in the value of any asset."

Thus, the Revenue submitted that the impugned notice is sustainable on the basis of above clause (g) of the *Explanation* to section 115JA, inserted by the Finance (No.2) Act, 2009 retrospectively with effect from 1st April, 1998.

**High Court's Observations:** The High Court observed that an identical issue had come up in *Rallis India Ltd. v. Asst. CIT [2010] 323 ITR 54 (Bom)* wherein a reopening notice was, *inter alia*, issued on the ground that the book profits have to be increased by the provision made for doubtful debts and for diminution in the value of investment in view of clause (c) of the *Explanation* to section 115JB. In the said case, the High Court recorded the fact that the Apex Court had, in *CIT v. HCL Comnet Systems and Services Ltd. [2008] 305 ITR 409*, held that the provision for doubtful debts is a provision made for diminution in the value of assets...
and is not a liability. Thus, it would not fall under clause (c) of the *Explanation* to section 115JA of the Act. Consequent to the aforesaid decision of the Apex Court, the Parliament has amended the *Explanation* both under section 115JA as well as section 115JB of the Act in 2009 by adding clause (g) and clause (i) with retrospective effect from April 1, 1998, and April 1, 2001, respectively. The Court held that though the amendment was made with the retrospective effect, the critical date is the date on which the Assessing Officer exercises jurisdiction under section 148 of the Act and the subsequent amendment could not have been and is in fact not a ground on which the Assessing Officer sought to reopen the assessment. It was held that the validity of a reopening notice of Assessing Officer is to be determined with reference to the reasons which are recorded in support of thereof and nothing else.

In this case also, it is clear that the reasons stated for reopening the assessment are that provision for doubtful debts and depletion in value of investments are both amounts set aside for meeting liabilities other than ascertained liabilities and hence, constitute income escaping assessment. The reasons recorded are not valid as the said items were not related to liabilities as perceived by the Assessing Officer. These provisions are made to take care of the likely fall in the value of assets.

The High Court observed that it is the Assessing Officer’s belief at the time of issuing the reassessment notice that determines the validity of the notice. In this case, he wanted to apply clause (c) of the *Explanation* to section 115JA and whereas the issues got covered by subsequent amendment by means of insertion of clause (g) to the *Explanation* to section 115JA by the Finance (No.2) Act, 2009 with retrospective effect from 1.4.1998. The subsequent event could not put life into the Assessing Officer’s reason that income chargeable to tax had escaped assessment when the reasons as originally recorded are still born.

### High Court’s Decision:

The position of law on the date of issue of notice under section 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.

The High Court, accordingly, allowed the writ and held that the reason for reopening the assessment cannot get validated by the retrospective amendment of law.

**Note** – It may be noted that section 115JA levying MAT was applicable from A.Y.1997-98 to A.Y.2000-01. From A.Y.2001-02, MAT is attracted under section 115JB. Clause (c) of *Explanation* 1 to section 115JB requires addition of amount set aside to provisions made for meeting liabilities, other than ascertained liabilities, to the net profit for arriving at the book profit for levy of MAT. Clause (i) was inserted by the Finance (No.2) Act, 2009 retrospectively with effect from 1st April, 2001 providing for addition of amount set aside as provision for diminution in the value of any asset, to the net profit for arriving at the book profit for levy of MAT. The rationale of the above ruling would, therefore, also apply in the context of examining the validity of notice issued for reopening an assessment on the basis of clause
10. Can the Assessing Officer reassess issues other than the issues in respect of which proceedings were initiated under section 147 when the original “reason to believe” on the basis of which the notice was issued ceased to exist?

**Delhi High Court ruling in Ranbaxy Laboratories Ltd. v. CIT (2011) 336 ITR 136:**

**Facts of the case:** In the present case, the assessee company was engaged in the business of manufacture and trading of pharmaceutical products. The Assessing Officer accepted the returned income filed by the assessee but initiated reassessment proceedings under section 147 in respect of the addition to be made on account of club fees, gifts and presents and provision for leave encashment. It was observed that the Assessing Officer had reason to believe that income has escaped assessment due to claim and allowance of such expenses and accordingly, he issued notice under section 148. However, after sufficient enquiries were made during reassessment proceedings, the Assessing Officer came to the conclusion that no additions are required to be made on account of these expenses. Therefore, while completing the reassessment he did not make additions on account of these items but instead made additions on the basis of other issues which were not the original “reason to believe” for the issue of notice under section 148. The Assessing Officer made such additions on the basis of Explanation 3 to section 147 as per which the Assessing Officer may assess the income which has escaped assessment and which comes to his notice subsequently in the course of proceedings under section 147 even though the said issue did not find mention in the reasons recorded in the notice issued under section 148.

**Issue:** The issue under consideration is whether the Assessing Officer can make an assessment on the basis of an issue which came to his notice during the course of assessment, where the issues, which originally formed the basis of issue of notice under section 148, were dropped in its entirety.

**High Court’s Observations:** As per section 147, the Assessing Officer 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 correct interpretation of the Parliament would be to regard the words ‘and also’ as being “conjunctive and cumulative with” and not “in alternative to” the first part of the sentence, namely, “the Assessing Officer may assess and reassess such income”. It is significant to note that Parliament has not used the word ‘or’ but has used the word ‘and’ together and in conjunction with the word ‘also’. The words ‘such income’ in the first part of the sentence refer to the income chargeable to tax which has escaped assessment and in respect of which the Assessing Officer has formed a reason to believe for issue of the notice under section 148.
Hence, the language used by the Parliament is indicative of the position that the assessment or reassessment must be in respect of the income, in respect of which the Assessing Officer 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.

**High Court’s Decision:** 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 Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. If he intends to do so, a fresh notice under section 148 would be necessary.

**II Punjab & Haryana High Court ruling in CIT v. Mehak Finvest P Ltd (2014) 367 ITR 769:**

**Facts of the case:** In the present case, reassessment proceedings were initiated against the assessee on the reason that various finance companies managed and controlled by certain persons were engaged in accommodation entries and the assessee-company was one among them. However, during the reassessment proceedings, the Assessing Officer noticed that fresh share application money amounting to ₹ 47 lakhs could not be explained by the assessee and hence invoked section 68 to bring to tax such sum. There was no addition on the basis of the original reason for which reassessment proceedings were initiated.

**Issue:** The issue under consideration is whether an addition can be made in reassessment when the original reasons on the basis of which notice for reassessment was issued did not survive.

**Assessee’s Contention vis-a-vis Revenue’s Contention:** The assessee contended that when the original reason prompting the initiation of reassessment proceedings did not survive, the question of making addition on some other fresh grounds was not possible. The basis of the assessee’s contention was the Bombay High Court ruling in case of CIT v. Jet Airways (I) Ltd (2011) 331 ITR 236 and Delhi High Court ruling in Ranbaxy Laboratories Ltd v. CIT (2011) 336 ITR 136.

On the other hand, the Revenue placed reliance on the jurisdictional High Court decision in the case of Majinder Singh Kang v. CIT (2012) 344 ITR 358 holding that reassessment can be made on the basis of additional grounds, even though the original reason forming the basis of issue of notice did not survive.

**High Court’s Observations:** The High Court noted that *Explanation 3 to section 147* nowhere postulates or contemplates that the Assessing Officer cannot make any additions on any other ground unless some addition is made on the basis of the original ground for which reassessment proceeding was initiated. It cited the dismissal of special leave petition (SLP) against the High Court ruling in Majinder Singh Kang’s case by the Supreme Court on 19.08.2011 as the binding precedent.
High Court’s Decision: The High Court, accordingly, held that even though no addition is made on the original grounds which formed the basis of initiation of reassessment proceedings, the Assessing Officer is empowered to make additions on another ground for which reassessment notice might not have been issued but which came to his notice subsequently during the course of proceedings for reassessment.

III Karnataka High Court ruling in N. Govindaraju v. ITO (2015) 377 ITR 243

Facts of the case: The assessee, an individual, deriving income from house property, transport business, capital gains and other sources filed his return of income declaring total income of ₹ 4.82 lakhs and agricultural income of ₹ 1.62 lakhs. The return was processed under section 143(1). Subsequently, a notice under section 148 was issued stating that the assessee had converted agricultural land into non-agricultural purposes, formed sites and sold the same but while arriving at the indexation benefit it was taken up to the date of sale instead of the date of conversion as per section 45(2). Thus, the reason for reassessment was the excessive indexation benefit availed by the assessee. However, in reassessment, the Assessing Officer adopted fair market value which was less than what was adopted by the assessee and also sought to disallow 50% of the expenses incurred on transfer. The original reason which prompted the reassessment was dropped and based on fresh grounds, reassessment was completed.

Issue under consideration: One of the issues under consideration before the High Court was whether the reassessment based on fresh grounds would be valid when the original reason which prompted the reassessment, does not survive.

Assessee’s contention vis-s-vis Revenue’s contention: The assessee contended that the reason for which notice was issued has to survive and it is only thereafter that “any other income” which is found to have escaped assessment can also be assessed or reassessed in such proceeding. On the other hand, the Revenue claimed that section 147 is in two parts which have to be read independently; the phrase “such income” in the first part is with regard to reasons which have been recorded and the phrase “any other income” is with regard to cases where no reasons are recorded in the notice but they come to the notice of the Assessing Officer during the course of reassessment proceeding. Both being independent, once the satisfaction in the notice is found sufficient, addition can be made on all grounds i.e., for reasons which have been recorded and also for items for which no reasons were recorded. All that is necessary is that, during the course of the proceedings under section 147, income chargeable to tax must have escaped assessment.

High Court’s Observations: The High Court observed that the controversy revolved around Explanation 3 to section 147 inserted by the Finance (No.2) Act 2009 retrospectively with effect from 1.4.1989. The Court took note of Circular No.5/2010 issued by CBDT after the amendment in Paragraph 47 with caption “Clarificatory amendment in respect of reassessment proceeding under section 147”. Para 47.3 reads as under:
“Therefore, to articulate the legislative intention clearly *Explanation 3* has been inserted in section 147 to provide that the Assessing Officer may examine, assess or reassess any issue relevant to income which comes to his notice subsequently in the course of proceedings under this section, notwithstanding that the reason for such issue has not been included in the reasons recorded under section 148(2)”. 

The High Court observed that it is true that if the foundation goes, then, the structure cannot remain. Meaning thereby, if notice has no sufficient reason or is invalid, no proceedings can be initiated. However, this can be verified at the initial stage by challenging the notice. If the notice is challenged and found to be valid, or where the notice is not at all challenged, then, in either case, it cannot be said that notice is invalid. As such, if the notice is valid, then the foundation remains and the proceedings on the basis of such notice can continue. The High Court reiterated that once the proceedings have been initiated on a valid notice, it becomes the duty of the Assessing Officer to levy tax on the entire income (including "any other income") which may have escaped assessment and comes to his notice during the course of the proceedings initiated under section 147.

**High Court’s Decision:** The High Court held that, in effect, once satisfaction of reasons for the notice is found sufficient i.e. if the notice under section 148(2) is found to be valid, then, the Assessing Officer may do reassessment in respect of any other item of income which may have escaped assessment, even though the original reason for issue of notice under section 148 does not survive.

This decision has dissented from the decisions in the case of *CIT v. Jet Airways (I) Ltd (2011) 331 ITR 236 (Bom); Ranbaxy Laboratories Ltd v. CIT (2011) 336 ITR 136 (Del).*

**Note** – In this case, the reassessment on the basis of reasons, which did not form the original reasons to believe, but were subsequently discovered by the Assessing Officer, was held to be valid, even though the original reasons did not survive.

However, the High Court further delved into the additional grounds, and held that the Tribunal was not justified in arriving at the fair market value of the property in question on 1.4.1981 without considering the material on record, including the valuation report, filed by the assessee. The matter was thus to be remanded to the Assessing Officer for determination of the fair market value of the property in question in accordance with law.

Further, without assigning any reason, the Assessing Officer had disallowed 50% of the total expenditure claimed by the assessee towards transfer and brokerage charges, even when the same had been paid by cheque and the receipt for which was obtained from the broker. When the specific case of the assessee was that heavy brokerage had to be paid because the property was under litigation and that it was occupied by unauthorised persons for which payment had to be made to get it vacated, disallowance could not be made on the ground that brokerage was generally being paid at the rate of 1-2%. The High Court opined that
when the said brokerage was paid by cheque and there was sufficient reason for paying higher brokerage, the entire amount ought to have been allowed and disallowance of 50% was not justified in law.

Thus, in this case, though the High Court upheld that reassessment could be made on fresh grounds even when the original reasons recorded for reopening the assessment did not survive, additions made on the basis of such fresh grounds were turned down by the High Court, since the reasons were not justified to merit such additions.

11. **Would the reassessment proceedings initiated under section 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?**

*Vipin Walia v. ITO (2016) 382 ITR 19 (Del)*

**Facts of the case:** A notice under section 148 dated 27th March, 2015 was addressed to the assessee for the assessment year 2008-09. The notice got returned unserved with the postal authorities endorsing on it the remarks “addressee expired”. Later, the Assessing Officer issued a letter dated 15.06.2015 to the petitioner seeking details of legal heirs/successors of the deceased (assessee) to complete the proceedings for the assessment year 2008-09.

The assessee, being one of the legal representatives of the deceased, wrote to the Assessing Officer pointing out that the proceedings initiated under section 148 were barred by limitation. The Assessing Officer proceeded to make the assessment under section 147 which the assessee challenged by means of a writ.

**High Court’s Observations:** The High Court took note of section 159 which sets out the procedure to be adopted when the assessment is made on the legal representatives. Section 159(2)(a) states that any proceeding already taken against an assessee ‘before his death’ shall be deemed to have been taken against the legal representative. As per section 159(2)(b), any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative of the deceased assessee, even if it had not been taken while the assessee was alive.

The Assessing Officer initiated proceedings under section 147 against the deceased for the assessment year 2008-09. The time limit for issue of notice was 31.03.2015, since the income escaping assessment exceeded ₹ 1 lakh. On March 27, 2015 when the notice was issued, the assessee was already dead. If the Department intended to proceed under section 147, it could have done so prior to 31.03.2015 by issuing a notice to the legal representatives of the deceased. Beyond that date, it could not have proceeded in the matter even by issuing notice to the legal representatives of the assessee.
12. Does the finding or direction in an appellate order that income relates to a different assessment year empower reopening of assessment for that assessment year, irrespective of the expiry of the six year time limit?

_CIT v. PP Engineering Work (2014) 369 ITR 433 (Del)_

**Facts of the case:** The Tribunal, in its order, directed that the cash credit of ₹ 32 lakhs found credited in the books of the assessee in the financial year 1999-2000 is chargeable to tax in the assessment year 2000-01 as against the assessment made by taxing the said amount in the assessment year 2001-02. In short, the Tribunal gave a finding that the cash credit under section 68 was assessable in a different assessment year than the assessment year in respect of which it heard the appeal. This prompted the Assessing Officer to issue a notice under section 148 in February, 2009 for reopening the proceedings for the A.Y. 2000-01. The issue is validity of notice issued after a lapse of 6 years from the end of the relevant assessment year.

The Commissioner (Appeals) held that the reassessment is barred by time limitation and the Tribunal also upheld the order of the Commissioner (Appeals) without making reference to section 150 read with _Explanation 2_ to section 153.

**High Court’s Opinion:** The High Court made reference to section 150 which overrides the time limitation specified in section 149. Also, _Explanation 2_ to section 153 makes it clear that when an order in appeal, revision or reference is made whereby any income is excluded from the total income of an assessee for an assessment year, an assessment of such income for another assessment year shall be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order for the purposes of section 150 and section 153.

The High Court made reference to the Delhi High Court ruling in the case of _Rural Electrification Corporation Ltd v. CIT (2013) 355 ITR 345_ and opined that the findings of Commissioner (Appeals) and Tribunal on the question of limitation as legally untenable and incorrect.

**High Court’s Decision:** The High Court observed that in view of the order of the Tribunal that the credit entries related to the earlier assessment year i.e., A.Y.2000-01, the Assessing Officer initiated reassessment proceedings under section 147 by issue of notice under section 148 for the year and passed an order dated 29/12/2009 making an addition of ₹ 32 lakhs. The High Court held that by virtue of section 150 read with _Explanation 2_ to section 153, the said order was not barred by limitation.
Note – Under section 149(1)(b), the time limit for issue for notice under section 148 is six years from the end of the relevant assessment year, where the income chargeable to tax which has escaped assessment amounts to or is likely to amount to ₹1 lakh or more for that year.

Section 150(1) states that notwithstanding anything contained in section 149, notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an appellate or revisionary order.

Explanation 2 to section 153 provides that where by an order referred to in section 250, 254, 260, 262, 263 or 264, any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for another assessment year shall, for the purposes of section 150 and section 153, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order.

13. Is initiation of reassessment beyond a period of 4 years on the basis of subsequent Tribunal and High Court ruling valid, if there is no failure on the part of the assessee to disclose fully and truly all materials facts?

Allanasons Ltd v. Dy. CIT (2014) 369 ITR 648 (Bom)

Facts of the case: The assessee-company filed its return of income in which a claim for deduction under Chapter VI-A was made. The case was subjected to scrutiny assessment and order under section 143(3) was passed reducing the claim for deduction under Chapter VI-A. After 4 years from the end of the assessment year, a notice under section 148 was issued ascribing reasons such as subsequent tribunal and other court decisions which show that the deduction was excessively allowed in this case. The assessee challenged the reassessment proceedings by means of a writ before the court, contending that it is a settled position in law that the decision rendered by court subsequent to the assessment order does not by itself amount to failure on the part of the assessee to fully and truly disclose all material facts necessary for assessment.

High Court’s Opinion: The High Court observed that it is well settled in terms of the proviso to section 147, that where any assessment is sought to be opened beyond a period of four years from the end of the relevant assessment year, two conditions have to be fulfilled cumulatively. The first condition is that there must be reason to believe that income chargeable to tax has escaped assessment. The second condition is that such escapement of income should have arisen due to failure on the assessee’s part to fully and truly disclose all material facts required for the assessment.

Thus, escapement of income prompting reopening of assessment beyond the period of 4 years from the end of the assessment year is not possible unless it is due to the failure of the assessee to disclose fully and truly all material facts necessary for assessment.
Even a subsequent change of law cannot be taken as income escaping assessment for triggering reassessment provisions beyond 4 years from the end of the assessment year unless there was a failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. The High Court observed that in this case, the reasons recorded, when read as a whole did not indicate even remotely any failure on the part of the assessee to disclose fully and truly any material fact necessary for assessment.

**High Court’s Decision:** The High Court, accordingly, held that a subsequent decision of Tribunal or High Court by itself is not adequate for reopening the assessment completed earlier under section 143(3) unless there is a failure on the part of the assessee to disclose complete facts.

14. Is the notice for reassessment issued under section 148 on the basis of tax evasion report received from the Investigation Unit of the Income-tax department valid, if such notice has been issued erroneously in the name of the erstwhile company which has now been converted into an LLP?

**Sky Light Hospitality LLP v. Assistant CIT [2018] 405 ITR 296 (Del)**

**Facts of the Case:** Sky Light Hospitality (SH) LLP, a Limited Liability Partnership, had acquired the rights and liabilities of Sky Light Hospitality Private Limited (SHPL) upon conversion under the Limited Liability Partnership Act, 2008. The return for the relevant assessment year filed by SHPL was processed under section 143(1) and was not subjected to scrutiny assessment. However, upon further receipt of a tax evasion report, a reassessment notice had been issued under section 148. The petitioner-LLP has filed a writ petition to quash the notice and the reassessment proceedings.

**Issue:** The issue under consideration is whether a notice for reassessment issued under section 148 on the basis of tax evasion report received from the Investigation Unit of the Income-tax department can be treated as valid, if such notice has been issued erroneously in the name of the erstwhile company which has now been converted into an LLP.

**Delhi High Court’s Observations:** The petitioner contended that the notice under section 148 was invalid because –

(i) the notice is not protected under section 292B as issuance of notice incorrectly in the name of SHPL had been done intentionally; and

(ii) the notice has been issued without a live nexus/reason to believe that the income had escaped assessment.

The High Court dismissed the contentions of the petitioner. Firstly, as long as there is “reason to believe” and not mere “reason to suspect”, Courts should not interject to stop the adjudication process. In the notice for reassessment, reference was made to the tax evasion report received from the Investigation unit of the Income-tax department. The tax evasion
report placed on record is detailed and elaborate. Peculiar and specific details relating to transactions between the assessee and a third party were mentioned in it. As per the tax evasion report, the assessee had not been able to satisfactorily explain source of ₹35 crores. Hence, there was evidence and material on record to justify issue of notice under section 148 of the Act.

Secondly, there is clear evidence that the notice was erroneously addressed to SHPL instead of SH LLP. The error or mistake was that the notice did not record the conversion of SHPL into SH LLP. However, it is clearly evident that the notice was meant for the assessee-LLP and no one else. When the assessee-LLP received the notice, it filed a letter, without prejudice, objecting to the notice being issued in the name of SHPL. However, the letter indicated that the assessee-LLP understood that the notice was for it. Section 292B was enacted to ensure that technical pleas (such as mistake, defect or omission) or procedural irregularities do not invalidate assessment proceedings. Courts have not proceeded on technical trivialities. The error here was only a technical issue on the part of the respondent. No prejudice was caused. The Court acknowledges the lapses in the litigation but observes that mere human errors cannot be used to nullify proceedings.

**Delhi High Court’s decision:** The Delhi High Court held that the notice issued under section 148 on the basis of tax evasion report received from the Investigation unit of the Income-tax department is valid, since there was reason to believe on the basis of the said report that income had escaped assessment, even though the notice was erroneously issued in the name of the erstwhile company which has now been converted into LLP. The Court clarifies that it has passed no opinion on the merits of the case which will be duly dealt with, by the Assessing Officer. The petitioner-LLP is required to appear before the Assessing Officer to deal with the merits of the issues pertaining to the notice.

**Note** - The special leave petition filed against the aforementioned decision of the Delhi High Court was dismissed by the Supreme Court.

15. **Is recording of satisfaction and quantification of escaped income a pre-condition for issuing notice under section 148 after 4 years from the end of the relevant assessment year?**

**Amarnath Agrawal v. CIT (2015) 371 ITR 183 (All)**

**Facts of the case:** The assessee along with four others had obtained a lease of land and was in possession of the same from 1953. Subsequently, the State Government introduced a policy for conversion of lease-hold to free-hold. The assessee applied for conversion before the District Magistrate in 1997 and a sale deed was executed. The assessee deposited the necessary charges as demanded by the State Government and a freehold sale deed dated 25th March, 1998 was executed. The assessee sold a portion of the land during the F.Y. 1999-2000 and admitted the same as long-term capital gain taking into account the lease
hold period also. In the assessment, the admission of income as long-term capital gain was accepted. However, after the expiry of four years from the end of the relevant assessment year, proceeding for reassessment of such income as short-term capital gains was resorted to by the Revenue on the ground that the lease hold period should not be considered for determining the period of holding of freehold land transferred. The assessee filed a writ challenging the validity of notice issued under section 148 stating that the requirements of section 149 read with section 151 were not considered by the Revenue.

**High Court's Opinion and Decision:** The High Court observed that two distinct conditions must be satisfied for assuming jurisdiction to issue a notice under section 148 after a period of 4 years viz. (i) escapement of income; and (ii) omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment.

Under section 149(1)(b), it is imperative for the Assessing Officer, in his reasons, to state that the escaped income is likely to be ₹ 1 lakh or more. This is an essential ingredient for seeking approval and the basis on which satisfaction is to be recorded by the competent authority under section 151. If the condition precedent to substantiate the satisfaction of escapement of income is not made, the issuance of notice would be invalid.

In this case, since no reasons were recorded that the escaped income is likely to be ₹ 1 lakh or more so that the Chief Commissioner or Commissioner may record his satisfaction under section 151, the initiation of reassessment proceedings after four years was barred by time. The reasons recorded by the Assessing Officer were that the assessee had computed long-term capital gains tax liability, whereas he was liable to pay short-term capital gains tax, since he had sold a portion of the property within 3 years from the date of conversion of leasehold land into a freehold land.

The High Court observed that the property was held for more than 3 years and the conversion from leasehold to freehold being an improvement of the title did not have any effect on the taxability of profits. The reasons recorded by the Assessing Officer did not indicate any failure on the part of the assessee to disclose fully and truly all material facts at the time of assessment; it also did not indicate that the quantum of escapement of income exceeds ₹ 1 lakh. Accordingly, the High Court held that, in this case, the issue of notice under section 148 after the four year time period was not valid.

16. **In case of change of incumbent of an office, can the successor Assessing Officer initiate reassessment proceedings on the ground of change of opinion in relation to an issue, which the predecessor Assessing Officer who framed the original assessment had already applied his mind and come to a conclusion?**

**H. K. Buildcon Ltd. v. Income-tax Officer (2011) 339 ITR 535 (Guj.)**

**High Court’s Observations:** On this issue, the Gujarat High Court referred to the ruling of the Apex Court in CIT v. Kelvinator of India Ltd. (2010) 320 ITR 561, wherein it was held that the Assessing Officer has the power only to reassess and not to review. Reassessment has...
to be based on fulfillment of certain precondition and if the concept of change of opinion is removed, then, in the garb of reopening the assessment, review would take place. The Apex Court further laid down that one must treat the concept of change of opinion as an in-built test to check abuse of power by the Assessing Officer. The Apex Court referred to Circular No.549 dated 31.10.1989 explaining the amendment made by the Direct Tax Laws (Amendment) Act, 1989 with effect from 1.4.1989 to reintroduce the expression “reason to believe”, and concluded that if the phrase “reason to believe” is omitted, the same would give arbitrary powers to the Assessing Officer to reopen the past assessment on mere change of opinion and this is not permissible even as per legislative intent.

### High Court's Decision

The Gujarat High Court, applying the rationale of the Apex Court ruling, observed that in the entire reasons recorded in this case, there was nothing on record to show that income had escaped assessment in respect of which the successor Assessing Officer received information subsequently, from an external source. The reasons recorded themselves indicated that the successor Assessing Officer had merely recorded a different opinion in relation to an issue to which the Assessing Officer, who had framed the original assessment, had already applied his mind and come to a conclusion. The notice of reassessment was, therefore, not valid.

17. **Would the doctrine of merger apply for calculating the period of limitation under section 154(7)?**

**CIT v. Tony Electronics Limited (2010) 320 ITR 378 (Del.)**

**Issue:** The issue under consideration is whether the time limit of 4 years as per section 154(7) would apply from the date of original assessment order or the order of the Appellate Authority.

**High Court's Decision:** The High Court held that once an appeal against the order passed by an authority is preferred and is decided by the appellate authority, the order of the Assessing Officer merges with the order of the appellate authority. After merger, the order of the original authority ceases to exist and the order of the appellate authority prevails. Thus, the period of limitation of 4 years for the purpose of section 154(7) has to be counted from the date of the order of the Appellate Authority.

**Note - In this case, the Delhi High Court has followed the decision of the Supreme Court in case of Hind Wire Industries v. CIT (1995) 212 ITR 639.**

18. **Is initiation of assessment by issue of notices under sections 143(2) and 142(1) in the name of the erstwhile amalgamating company, after approval of the scheme of amalgamation by the High Court and intimation of such amalgamation to the Assessing Officer, void ab initio?**

**Pr. CIT v. Maruti Suzuki India Ltd. [2019] 416 ITR 613 (SC)**
Facts of the case: The assessee-company, S, filed its return of income on November 28, 2012 (when no amalgamation has taken place). On January 29, 2013, the High Court approved the Scheme for Amalgamation of S (amalgamating company) with M (amalgamated company) w.e.f. April 1, 2012. On April 2, 2013, the amalgamated company, M, intimated the Assessing Officer of the amalgamation. Notice under section 143(2) was issued to S on September 26, 2013, followed by a notice under section 142(1). The Transfer Pricing Officer (TPO) passed an order making an adjustment in respect of royalty. A draft assessment order was passed in the name of the amalgamating company, S. The amalgamated company, M, participated in the assessment proceedings and also filed an appeal before the Dispute Resolution Panel (DRP) as successor in interest of S. No objection was taken by M before the DRP that the draft assessment order was passed in the name of S. The DRP issued its final assessment order on October 31, 2016 in the name of S. In appeal before the Tribunal, the assessee, M, raised the objection that the assessment proceedings were continued in the name of the non-existent entity S and that the final assessment order which was also made in the name of a non-existent entity would be invalid. The Tribunal set aside the final assessment order on the ground that it was void ab initio, having been passed in the name of a non-existent entity. The High Court affirmed the decision of the Tribunal.

Relevant provision of the Income-tax Act, 1961: Section 292B allows for curing of defects of a technical nature. The rationale behind this section is that the return of income, assessment, notice, summons or other proceedings should not be held to be invalid due to technical mistakes, which otherwise do not have much impact touching its legality, provided such return, assessment, notice, summons or other proceedings, etc., are otherwise in conformity with the purpose of the Income-tax Act, 1961.

Issue: Whether issue of notice by the Assessing Officer in the name of the amalgamating company (S, in this case), after such company has amalgamated with another company (M, in this case) and after he has been so informed of such amalgamation, is a defect curable under section 292B? Would participation of the amalgamated company, M, in the assessment proceedings operate as an estoppel against law?

Supreme Court's Observations: The consequence of approval of the scheme of amalgamation under section 394 of the Companies Act, 1956 is that the amalgamating company ceased to exist. It could not, thereafter, be regarded as a person under section 2(31) against which assessment proceedings could be initiated or an order of assessment could be made. Notice under section 143(2) was issued on September 26, 2013 to S, the amalgamating company. Prior to the date on which the jurisdictional notice under section 143(2) was issued, the scheme of amalgamation had been approved by the High Court under the Companies Act, 1956 and the same had also been informed to the Assessing Officer.

5 Section 232 of the Companies Act, 2013
Supreme Court’s Decision: In the present case, despite the fact that the Assessing Officer was informed of the amalgamating-company (S) having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued in the name of S, the amalgamating company. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. The Supreme Court, accordingly, held that the initiation of assessment proceedings on a non-existent entity (S, in this case) was void-ab-initio and participation in the proceedings by the appellant-amalgamated company (M, in this case) in the circumstances cannot operate as an estoppel against law.

19. Can the assessee’s failure to produce Commissioner’s order of approval dating back to the year 1976 for employees Gratuity Scheme, tantamount to non-disclosure of material facts to justify re-opening of assessment under section 148, where he has produced the agreement between LIC and the trustees of the Gratuity Scheme, on the basis of which claim for deduction under section 36(1)(v) was being allowed in the earlier years?

Valsad District Central Co-operative Bank Ltd. v. ACIT [2019] 414 ITR 616 (Guj)

Facts of the case: For the relevant assessment year, the assessee-co-operative bank claimed deduction under section 36(1)(v) in respect of its contribution towards gratuity fund for the benefit of its employees. No disallowance was made in respect of such contribution in assessment order passed under section 143(3). After four years, however, the Assessing Officer issued a notice under section 148, recording reasons to believe that the assessee has not disclosed fully and truly all material facts necessary for assessment, since it failed to produce Commissioner’s order of approval of the gratuity fund for the purpose of claiming deduction under section 36(1)(v). Thus, he came to a conclusion that the income of the assessee to the extent of contribution towards gratuity fund has escaped assessment under section 147.

Assessee’s Objections: The assessee raised objections against the notice issued under section 148 pointing out that the gratuity scheme is being managed by the LIC, pursuant to an agreement between LIC and the trustees of the gratuity scheme. The LIC had accepted the responsibility to manage the fund only after verifying that the scheme was duly approved by the Commissioner of Income-tax. During the course of original assessment, assessee had produced the documents pertaining to the contribution made towards the fund and the agreement with LIC to manage the fund. It was only after examining these documents, that the assessee’s claim of deduction was accepted.

As the scheme was framed in 1976, the assessee, at this point of time, did not have the Commissioner’s approval order (as there has been a long passage of time since the year 1976). Nevertheless, it was on the basis of such approval that the assessee had been, year
after year, claiming the deduction which was also granted, in all assessment years, some of them after scrutiny. The assessee, therefore, contended that there was no failure on its part to disclose truly and fully all material facts and that the reopening of the assessment amounted to change of opinion by the Assessing Officer.

**Issue:** The issue under consideration is whether, in this case, re-opening the assessment under section 148 was merely on account of a change of opinion of the Assessing Officer, there being no failure on the part of the assessee to disclose truly and fully all material facts.

**High Court's Observations:** The High Court noted that during the course of original assessment, the Assessing Officer has not pointedly examined this aspect of gratuity, nor raised any queries thereto. The question of change of opinion may, therefore, not arise. However, when examining the validity of a notice issued after four years, the crucial additional element would be of the failure on the part of the assessee to disclose true and full facts. Considering the peculiar facts of the present case, in none of the past years since 1976, any such issue was raised by the Assessing Officers in this regard. Therefore, in the relevant assessment year, the assessee produced during the course of original assessment, what it had been producing all along namely, the contribution made towards the fund and the agreement with LIC to manage the fund. If the Assessing Officer had any doubt about such a claim, it was always open for him to examine it and ask the assessee to fulfil further requirements.

**High Court's Decision:** The High Court, accordingly, held that merely because the assessee is unable to produce a copy of the order of approval of the Gratuity Scheme by the Commissioner after long gap of time, it cannot tantamount to failure on the part of the assessee to disclose truly and fully all material facts, since the assessee had produced a copy of the agreement with LIC and the trustees of the gratuity scheme in the course of original assessment, in line with the documents produced in the course of assessment in the earlier years. Therefore, in the absence of failure on the part of the assessee to disclose truly and fully all material facts, reopening of assessment by issue of notice under section 148 is not valid, though, there may not be a change of opinion on the part of the Assessing Officer, as he may not have pointedly examined this aspect of gratuity in the original assessment.