MISCELLANEOUS PROVISIONS

After studying this chapter, you would be able to -

- **identify** the permissible mode of taking or accepting certain loans, deposits and money receivable in relation to transfer of immovable property and **examine** the penal consequences for non-compliance;

- **recognize** the permissible mode of receipt of amounts exceeding a certain threshold and **examine** the penal consequences for receipt of such amount by any other mode;

- **identify** the permissible mode of repayment of certain loans or deposit or advance money repayable in relation to transfer of immovable property and **examine** the penal consequences for non-compliance;

- **appreciate** the provisions relating to provisional attachment of property to protect the interest of the revenue;

- **list out** the permissible modes of service of notice and the persons on whom notice should be served;

- **comprehend** the meaning of "specified financial transaction" and **identify** the specified persons responsible for furnishing statement of financial transaction or reportable account;

- **list out** the persons who can act as “authorised representatives” on behalf of the assessee.
23.1 MODE OF TAKING OR ACCEPTING CERTAIN LOANS, DEPOSITS AND SPECIFIED SUM [SECTION 269SS]

Section 269SS provides that no person shall take or accept any loan or deposit or specified sum from any other person (depositor) except by account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account or through such other prescribed electronic mode (w.e.f. 1.9.2019) if –

1. The amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit of specified sum; or

2. On the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or

3. The amount or the aggregate amount referred to in (1) together with the amount or the aggregate amount referred to in (2), is ₹ 20,000 or more.

Non-applicability of the above requirement in certain cases

1. Loan or deposit or specified sum taken or accepted from, or any loan or deposit taken from or accepted by the Government, any banking company, post office saving bank or any co-operative bank, any corporation established by a Central, State or Provincial Act: or any Government company as defined in 2(45) of the Companies Act, 2013.

2. Loan or deposit or specified sum taken, or accepted by, any institution, association or body or class of institutions, associations, bodies which the Central Government may, for reasons to be recorded in writing notify in this behalf in the Official Gazette.

3. Cases where the persons involved in the transaction derive income only from agriculture or where neither of them has any income chargeable to tax under the Act.

Meaning of certain terms

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Loan or deposit</td>
<td>Any loan or deposit of money</td>
</tr>
<tr>
<td>(ii) Specified sum</td>
<td>any sum of money receivable, whether as advance or otherwise, in relation to transfer of immovable property, whether or not the transfer takes place.</td>
</tr>
</tbody>
</table>

Penalty for failure to comply with the provisions of section 269SS

If a person takes or accepts any loan or deposit or specified sum in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty under section 271D, a sum of equal to the amount of the loan or deposit or specified sum taken or accepted.
23.2 MODE OF UNDERTAKING TRANSACTIONS
[SECTION 269ST]

Section 269ST provides that no person receive an amount of ₹2,00,000 or more except by account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account or through such other prescribed electronic mode (w.e.f. 1.9.2019), –

(a) in aggregate from a person in a day; or
(b) in respect of a single transaction; or
(c) in respect of transactions relating to one event or occasion from a person.

Note - The CBDT has, vide Circular No. 22/2017 dated 3.7.2017, clarified that in respect of receipt in the nature of repayment of loan by Non-banking Finance Companies (NBFCs) or Housing Finance Companies (HFCs), the receipt of one instalment of loan repayment in respect of a loan shall constitute a ‘single transaction’ as specified in clause (b) of section 269ST and all the instalments paid for a loan shall not be aggregated for the purposes of determining applicability of the provisions section 269ST.

Non-applicability of the above requirement in certain cases

(1) any receipt by Government, any banking company, post office savings bank or co-operative bank
(2) transactions of the nature referred to in section 269SS.
(3) such other persons or class of persons or receipts, notified by the Central Government.

Accordingly, vide Notification No. 28/2017, dated 5-4-2017 and Notification No. 57/2017, dated 3-7-2017, the Central Government has specified that the provision of section 269ST shall not apply to the following, namely:-

(a) receipt (cash withdrawals) by any person from a bank, co-operative bank or a post office savings bank
(b) receipt by a business correspondent on behalf of a banking company or co-operative bank, in accordance with the guidelines issued by the Reserve Bank of India;
(c) receipt by a white label automated teller machine operator from retail outlet sources on behalf of a banking company or co-operative bank, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007;
(d) receipt from an agent by an issuer of pre-paid payment instruments, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007;
(e) receipt by a company or institution issuing credit cards against bills raised in respect of one or more credit cards;

(f) receipt which is not includible in the total income under section 10(17A).

**Penalty for failure to comply with the provisions of section 269ST**

If a person receives any sum in contravention of the provisions of section 269ST, he shall be liable to pay, by way of penalty under section 271DA, a sum of equal to the amount of such receipt. However, no penalty shall be imposed if such person proves that there were good and sufficient reasons for the contravention.

<table>
<thead>
<tr>
<th>Applicability of income-tax provisions under section 40A(3), section 269ST and Rule 114B to cash sale of agricultural produce by cultivators/agriculturists to traders [Circular No. 27/2017, dated 3-11-2017]</th>
</tr>
</thead>
</table>
| The provisions of section 40A(3) provide for the disallowance of expenditure exceeding ₹ 10,000 made otherwise than by an account payee cheque/draft or use of electronic clearing system through a bank account. However, Rule 6DD carves out certain exceptions from application of the provisions of section 40A(3) in some specific cases and circumstances, which *inter alia*, include payments made for purchase of agricultural produce to the cultivators of such produce. Therefore, no disallowance under section 40A(3) can be made if the trader makes cash purchases of agricultural produce from the cultivator.

Further, section 269ST, subject to certain exceptions, prohibits receipt of ₹ 2 lakh or more, otherwise than by an account payee cheque/draft or by use of electronic clearing system through a bank account from a person in a day or in respect of a single transaction or in respect of transactions relating to an event or occasion from a person. Therefore, any cash sale of an amount of ₹ 2 lakh or more by a cultivator of agricultural produce is prohibited under section 269ST.

Furthermore, the provisions relating to quoting of PAN or furnishing of Form No. 60 under Rule 114B do not apply to the sale transaction of ₹ 2 lakh or less.

In view of the above, it is clarified by the CBDT that cash sale of the agricultural produce by its cultivator to the trader for an amount less than ₹ 2 lakh will **not** -

(a) result in any disallowance of expenditure under section 40A(3) in the case of trader.

(b) attract prohibition under section 269ST in the case of the cultivator; and

(c) require the cultivator to quote his PAN/ or furnish Form No. 60.

<table>
<thead>
<tr>
<th>Clarifications in respect of section 269ST [Circular No. 22/2017, Dated 03.07.2017]</th>
</tr>
</thead>
<tbody>
<tr>
<td>With a view to promote digital economy and create a disincentive against cash economy, new section 269ST has been inserted in the Income-tax Act, 1961 vide Finance Act, 2017. The said section <em>inter-alia</em> prohibits receipt of an amount of two lakh rupees or more by a person, in the</td>
</tr>
</tbody>
</table>
circumstances specified therein, through modes other than by way of an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account. Penal provisions have also been introduced by way of a new section 271DA, which provides that if a person receives any amount in contravention to the provisions of section 269ST, it shall be liable to pay penalty of a sum equal to the amount of such receipt.

Subsequently, representations were received from non-banking financial companies (NBFCs) and housing finance companies (HFCs) as to whether the provisions of section 269ST shall apply to one instalment of loan repayment or the whole amount of such repayment.

Accordingly, the CBDT has, vide this circular, clarified that in respect of receipt, in the nature of repayment of loan, by NBFCs or HFCs, the receipt of one instalment of loan repayment in respect of a loan shall constitute a ‘single transaction’ as specified in section 269ST(b) and all the instalments paid for a loan shall not be aggregated for the purposes of determining applicability of the provisions section 269ST.

23.3 ACCEPTANCE OF PAYMENT THROUGH PRESCRIBED ELECTRONIC MODES [SECTION 269SU]

(i) **Legislative intent** - In order to achieve the mission of the Government to move towards a less cash economy to reduce generation and circulation of black money and to promote digital economy, new section 269SU has been inserted w.e.f. 1st November, 2019.

(ii) **Applicability** - This section requires every person, carrying on business to provide facility for accepting payment through the prescribed electronic modes, in addition to the facility for other electronic modes of payment, if any, being provided by such person, if his total sales, turnover or gross receipts in business exceeds Rs.50 crore during the immediately preceding previous year.

(iii) **Penalty for non-compliance** - In order to ensure compliance of the provisions of section 269SU, new section 271DB has been inserted with effect from 1st November, 2019 to provide that the failure to provide facility for electronic modes of payment prescribed under section 269SU would attract penalty of a sum of ₹5,000, for every day during which such failure continues. However, the penalty shall not be imposed if the person proves that there were good and sufficient reasons for such failure. Further, any such penalty shall be imposed by the Joint Commissioner.

(iv) **Consequential amendment in the Payment and Settlement Systems Act, 2007** – This has been effected to ensure that no bank or system provider imposes any charge upon anyone, either directly or indirectly, for using the modes of electronic payment prescribed under section 269SU of the Income-tax Act, 1961.
23.4 MODE OF REPAYMENT OF CERTAIN LOANS OR DEPOSITS [SECTION 269T]

Section 269T provides that no branch of the banking company or a co-operative bank or any other company or co-operative society or a firm or other person, shall repay any loan or deposit made with it or any specified advance received by it otherwise than by account payee cheque or account payee bank draft, drawn in the name of the person who has made the loan or depositor paid the specified advance, or by use of electronic clearing system through a bank account or through such other prescribed electronic mode [w.e.f. 1.9.2019], if –

(1) the amount of loan or depositor specified advance together with interest, if any, payable thereon; or

(2) the aggregate amount of such loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment, together with the interest, if any, payable on such loan or deposit; or

(3) the aggregate amount of the specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with interest, if any, payable on such specified advances is `20,000 or more.

Non-applicability of the above requirement in certain cases

(1) Where the repayment is made by a branch of bank or a cooperative bank, such repayment could be made by crediting the amount of such loan or deposit to the saving bank account or the current account, if any, with such branch of the person to whom such loan or deposit has to be repaid.

(2) Further, the provisions of this section shall not apply in case of repayment of any loan or deposit or specified advance taken or accepted from -

(i) Government;

(ii) any banking company, post office savings bank or co-operative bank;

(iii) any corporation established by a Central, State or Provincial Act;

(iv) any Government company as defined in section 617 of the Companies Act, 1956¹;

(v) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.

¹Section 2(45) of the Companies Act, 2013

© The Institute of Chartered Accountants of India
Meaning of certain terms

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Banking company</td>
<td>A company to which the Banking Regulation Act, 1949 applies and includes any bank or banking institution referred to in section 51 of that Act.</td>
</tr>
<tr>
<td>(2) Co-operative bank</td>
<td>The meaning assigned to it in Part V of the Banking Regulation Act, 1949 i.e., a state co-operative bank, a central co-operative bank and a primary co-operative bank.</td>
</tr>
<tr>
<td>(3) Loan or Deposit</td>
<td>Any loan or deposit of money which is repayable after notice or repayable after a period. In the case of any person other than a company, loan or deposit of any nature will be covered by this section.</td>
</tr>
<tr>
<td>(4) Specified Advance</td>
<td>Any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not the transfer takes place.</td>
</tr>
</tbody>
</table>

Penalty for failure to comply with the provisions of section 269T

If a person repays any loan or deposit or specified advance referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty under section 271E, a sum equal to the amount of the loan or deposit or specified advance so repaid.

23.5 TRANSFERS TO DEFRAUD REVENUE VOID [SECTION 281]

(1) As a safeguard against non-realisation of revenue due to fraudulent transferring of assets by a defaulting assessee it is provided under this section that, certain transfers specified therein are deemed to be void for purpose of income-tax.

(2) Accordingly, in cases where, during the pendency of any proceeding under the Income-tax Act, 1961 or after the completion thereof, but before the service of notice by the Tax Recovery Officer any assessee creates a charge on, or parts with, the property by way of sale, mortgage, gift, exchange, or any other mode of transfer whatsoever of any of his assets in favour of any other person such a charge or transfer must be deemed to be void as against any claim in respect of any tax, penalty, interest or fine payable by the assessee as a result of the completion of the proceedings or otherwise.

(3) The charge or transfer made by the assessee, however, would not be void in case where it is made:
(a) for adequate consideration and without any notice of the pendency of such proceeding or, as the case may be, without any notice of such tax or other monies remaining payable by the assessee; or

(b) with the previous permission of the Assessing Officer.

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

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

23.6 PROVISIONAL ATTACHMENT TO PROTECT THE INTERESTS OF THE REVENUE [SECTION 281B]

(1) Assessing Officer’s power to provisionally attach property for protecting interests of the revenue: Under section 281B, the Assessing Officer is empowered to provisionally attach any property of the assessee, by an order in writing, during the pendency of assessment or reassessment proceedings, with the prior approval of the income-tax authorities specified therein, if he is of the opinion that it is necessary to do so for the purpose of protecting the interests of the revenue. Such provisional attachment has to be made in the manner provided in the Second Schedule.

(2) Validity of provisional attachment: The provisional attachment shall be valid for a period of 6 months from the date of the order. However, the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director may extend the period of provisional attachment, for reasons to be recorded in writing, by a further period as he thinks fit. However, the total period of extension should not exceed two years or sixty days after the date of assessment or reassessment, whichever is later.

(3) Recommendation of Income Tax Simplification Committee: The Income Tax Simplification Committee under the chairmanship of Justice R.V. Easwar (Retd.) has recommended that provisional attachment of property could be substituted by a bank guarantee subject to fulfilment of certain conditions.

(4) Furnishing bank guarantee in lieu of provisional attachment of property - Enabling provisions inserted: Accordingly, sub-sections (3) to (9) have been inserted in section 281B providing for furnishing of bank guarantee in lieu of provisional attachment of property. Further Explanation to section 281B(1), providing that proceedings under section
132(5) would be deemed to be proceedings for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment, has been consequently omitted.

(5) **Furnishing of bank guarantee in lieu of provisional attachment [Section 281B(3)]**: The Assessing Officer shall, by an order in writing, revoke provisional attachment of property made under section 281B(1) in a case where the assessee furnishes a guarantee from a scheduled bank, for an amount not less than the fair market value of such provisionally attached property or for an amount which is sufficient to protect the interests of the revenue.

(6) **Reference to Valuation Officer [Section 281B(4)]**: For enabling determination of the fair market value of the property provisionally attached, the Assessing Officer may, make a reference to the Valuation Officer, who is required to estimate of the fair market value of the property and submit the report of such estimation to the Assessing Officer within a period of 30 days from the date of receipt of such reference.

(7) **Time limit for passing order revoking the attachment of property [Section 281B(5)]**: For ensuring revocation of attachment of property in lieu of bank guarantee in a time bound manner, an order revoking the attachment has to be made by the Assessing Officer within the following time period:

<table>
<thead>
<tr>
<th>Case</th>
<th>Time period for revoking attachment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>in a case where a reference is made to the Valuation Officer within 45 days from the date of receipt of such guarantee</td>
</tr>
<tr>
<td>(ii)</td>
<td>in any other case within 15 days from the date of receipt of such guarantee</td>
</tr>
</tbody>
</table>

(8) **Assessing Officer empowered to invoke bank guarantee for failure to pay sum specified in notice of demand [Section 281B(6)]**: Where a notice of demand specifying a sum payable is served upon the assessee and the assessee fails to pay such sum within the time specified in the notice of demand, the Assessing Officer may invoke the bank guarantee, wholly or partly, to recover the said amount.

(9) **Power to invoke bank guarantee on assessee’s failure to renew or furnish new guarantee [Section 281B(7)]**: In a case where the assessee fails to renew the bank guarantee or fails to furnish a new guarantee from a scheduled bank for an equal amount fifteen days before the expiry of such guarantee, the Assessing Officer shall, in the interests of the revenue, invoke the bank guarantee.

(10) **Manner of adjustment of amount realized by invoking bank guarantee [Section 281B(8)]**:

(i) The amount realised by invoking the bank guarantee shall be adjusted against the existing demand which is payable by the assessee;
(ii) The balance amount, if any, has to be deposited in the Personal Deposit Account of the Principal Commissioner or Commissioner in the branch of Reserve Bank of India or the State Bank of India or of its subsidiaries or any bank as may be appointed by the Reserve Bank of India as its agent at the place where the office of the Principal Commissioner or Commissioner is situated.

(11) **Release of bank guarantee [Section 281B(9)]:** In a case where the Assessing Officer is satisfied that the bank guarantee is not required anymore to protect the interests of the revenue, he shall release that guarantee forthwith.

### 23.7 SERVICE OF NOTICE [SECTIONS 282, 283 & 284]

(1) **Permissible modes of service of notice [Section 282]** - The service of a notice or summon or requisition or order or any other communication under the Act may be made by delivering or transmitting a copy thereof to the person named therein -

(i) by post or such courier services as approved by the CBDT; or

(ii) in such manner as provided in the Code of Civil Procedure, 1908 for the purposes of service of summons; or

(iii) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000; or

(iv) by any other means of transmission as may be provided by rules made by the CBDT in this behalf.

(2) **Rules to provide for the addresses for communication** - The CBDT is empowered to make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which such communication may be delivered or transmitted to the person named therein.

(3) **Addressee in case of different assessee** – The following is a list of persons on whom notice should be served and such a notice will be notice to the corresponding assessee mentioned.

<table>
<thead>
<tr>
<th>Assessee</th>
<th>Addressee</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) An existing firm</td>
<td>Any member of the firm</td>
</tr>
<tr>
<td>(ii) An existing H.U.F.</td>
<td>The Manager or any adult member of the family.</td>
</tr>
<tr>
<td>(iii) A Company</td>
<td>The Principal Officer thereof</td>
</tr>
<tr>
<td>(iv) Local authority</td>
<td>The Principal Officer thereof</td>
</tr>
<tr>
<td>(v) An existing association or body of individuals</td>
<td>The Principal Officer or any member thereof</td>
</tr>
<tr>
<td>(vi) An individual</td>
<td>The individual himself</td>
</tr>
</tbody>
</table>
(vii) Any other person

The person incharge of the management and control of his affairs.

(viii) A dissolved firm

Any adult person who was a partner immediately before dissolution.

(ix) A partitioned H.U.F.

The last manager of the family; if he is dead, all adults who were members immediately before the partition.

(x) A dissolved association of persons

Any person who was a member immediately before dissolution

(xi) A discontinued business

The assessee;

In the case of a firm or an association of persons, any person who was a member at the time of discontinuance;

In the case of a company, its Principal Officer.

---

23.8 AUTHENTICATION OF NOTICES AND OTHER DOCUMENTS [SECTION 282A]

(1) Section 282A provides that where any notice or other document is required to be issued by any income-tax authority, such notice or other document should be signed and issued in paper form or communicated in electronic form by that authority in accordance with the prescribed procedure. This is in order to provide adequate legal framework for paperless assessment for improving efficiency and reducing the compliance burden.

(2) Every notice or other document required to be issued, served or given for the purposes of this Act by any income-tax authority, shall be deemed to be authenticated if the name and office of a designated income-tax authority is printed, stamped or otherwise written thereon.

(3) A designated income-tax authority means any income-tax authority authorised by the CBDT to issue, serve or give such notice or other document after authentication in the manner as provided in (2) above.

---

23.9 OBLIGATION TO FURNISH STATEMENT OF FINANCIAL TRANSACTION OR REPORTABLE ACCOUNT [SECTION 285BA]

(1) Section 285BA imposes an obligation on specified persons to furnish statement of financial transaction or reportable account. Thus, the section also provides for furnishing of statement by a prescribed reporting financial institution in respect of a specified financial transaction or reportable account to the prescribed income-tax authority.
As per section 285BA(1), the following persons, who are responsible for registering or maintaining books of account or other document containing a record of any specified financial transaction or any reportable account as may be prescribed under any law for the time being in force, are required to furnish a statement in respect of such specified financial transaction or reportable account which is registered or recorded or maintained by him and information relating to which is relevant and required for the purposes of the Income-tax Act, 1961 to the income-tax authority or such other authority or agency as may be prescribed -

(a) an assessee;
(b) a prescribed person in the case of an office of Government;
(c) a local authority or other public body or association; or
(d) the Registrar or Sub-Registrar appointed under the Registration Act, 1908; or
(e) the registering authority empowered to register motor vehicles under the Motor Vehicles Act, 1988; or
(f) the Post Master General referred to in the Indian Post Office Act, 1898; or
(g) the Collector referred to in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; or
(h) the recognised stock exchange referred to in the Securities Contracts (Regulation) Act, 1956; or
(i) an officer of the Reserve Bank of India; or
(j) a depository referred to in the Depositories Act, 1996; or
(k) a prescribed reporting financial institution; or
(l) **a person, other than those referred to in clauses (a) to (k), as may be prescribed. [w.e.f. 1.9.2019]**

“Specified financial transactions” means any of the following transactions which may be prescribed -

(a) transaction of purchase, sale or exchange of goods or property or right or interest in a property; or
(b) transaction for rendering any service; or
(c) transaction under a works contract; or
(d) transaction by way of an investment made or an expenditure incurred; or
(e) transaction for taking or accepting any loan or deposit,
(4) The CBDT may prescribe different values for different transactions in respect of different persons having regard to the nature of such transaction.

(5) As per Rule 114E, the statement of financial transaction or reportable account shall be furnished in Form No. 61A and shall be verified in the manner indicated therein. Accordingly, the statement of financial transactions has to be furnished on or before 31st May, immediately following the financial year in which the transaction is registered or recorded.

(6) Where the prescribed income-tax authority considers that the statement furnished under section 285BA(1) is defective, he may intimate the defect to the person who has furnished such statement and give him an opportunity of rectifying the defect within a period of 30 days from the date of such intimation. The prescribed income-tax authority may allow, on an application made in this behalf, a further period of time, at his discretion.

(7) If the defect is not rectified within the said period of 30 days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, the provisions of this Act shall apply as if such person had furnished inaccurate information in the statement. Consequently, the prescribed income-tax authority may direct such person to pay penalty of ₹50,000 under section 271FAA.

(8) Where a person who is required to furnish a statement under section 285BA(1), has not furnished the same within the specified time, the prescribed income-tax authority may serve upon such person a notice requiring him to furnish such statement within a period not exceeding thirty days from the date of service of such notice and he shall furnish the statement within the time specified in the notice [Section 285BA(5)].

(9) If any person, having furnished a statement under section 285BA(1), or in pursuance of a notice issued under section 285BA(5), comes to know or discovers any inaccuracy in the information provided in the statement, he shall, within a period of ten days inform the income-tax authority or other authority or agency referred to in section 285BA(1), the inaccuracy in such statement and furnish the correct information in the prescribed manner [Section 285BA(6)]

(10) Under section 285BA(7), the Central Government may, by way of rules, specify —

(i) the persons referred to in section 285BA(1) to be registered with the prescribed income-tax authority;

(ii) the nature of information and the manner in which such information shall be

2 Prior to 1.9.2019, such statement would have been treated as an invalid statement and the provisions of the Act would have applied as if such person had failed to furnish the statement.
maintained by the persons referred to in point (i); and

(iii) the due diligence to be carried out by the persons for the purpose of identification of any reportable account referred to in section 285BA(1).

(11) **Furnishing of statement of financial transaction [Rule 114E]**: The statement of financial transaction required to be furnished under section 285BA(1) of the Income-tax Act, 1961 shall be furnished by every person mentioned in column (3) of the Table below in respect of all the transactions of the nature and value specified in the corresponding entry in column (2) of the said Table, which are registered and recorded by him on or after 1\textsuperscript{st} April, 2016.

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Nature and value of transaction</th>
<th>Class of person (reporting person)</th>
</tr>
</thead>
</table>
| 1.    | (a) Payment made in cash for purchase of bank drafts or pay orders or banker’s cheque of an amount aggregating to ` 10 lakh or more in a financial year.  
(b) Payments made in cash aggregating to ` 10 lakh or more during the financial year for purchase of pre-paid instruments issued by Reserve Bank of India under the Payment and Settlement Systems Act, 2007.  
(c) Cash deposits or cash withdrawals (including through bearer’s cheque) aggregating to ` 50 lakhs or more in a financial year, in or from one or more current account of a person. | 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) |
| 2.    | Cash deposits aggregating to ` 10 lakhs or more in a financial year, in one or more accounts (other than a current account and time deposit) of a person. | (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) Post Master General as referred to in the Indian Post Office Act, 1898. |
<p>| 3.    | One or more time deposits (other than a time deposit made through renewal of another time deposit) of a person | (i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>aggregating to ₹ 10 lakhs or more in a financial year of a person.</td>
<td>applies (including any bank or banking institution referred to in section 51 of that Act); (ii) Post Master General as referred to in the Indian Post Office Act, 1898; (iii) Nidhi referred to in section 406 of the Companies Act, 2013; (iv) NBFC 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></td>
</tr>
<tr>
<td>4.</td>
<td>Payments made by any person of an amount aggregating to- (i) ₹ 1 lakh or more in cash; or (ii) ₹ 10 lakh or more by any other mode, against bills raised in respect of one or more credit cards issued to that person, in a financial year.</td>
<td>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 any other company or institution issuing credit card.</td>
</tr>
<tr>
<td>5.</td>
<td>Receipt from any person of an amount aggregating to ₹ 10 lakh or more in a financial year for acquiring bonds or debentures issued by the company or institution (other than the amount received on account of renewal of the bond or debenture issued by that company).</td>
<td>A company or institution issuing bonds or debentures.</td>
</tr>
<tr>
<td>6.</td>
<td>Receipt from any person of an amount aggregating to ₹ 10 lakh or more in a financial year for acquiring shares (including share application money) issued by the company.</td>
<td>A company issuing shares</td>
</tr>
<tr>
<td>7.</td>
<td>Buy back of shares from any person (other than the shares bought in the open market) for an amount or value aggregating to ₹ 10 lakh or more in a financial year.</td>
<td>A company listed on a recognised stock exchange purchasing its own securities under section 68 of the Companies Act, 2013.</td>
</tr>
<tr>
<td>8.</td>
<td>Receipt from any person of an amount aggregating to ₹ 10 lakh or more in a</td>
<td>A trustee of a Mutual Fund or such other person managing the affairs of</td>
</tr>
<tr>
<td>Financial Year for Acquiring Units of One or More Schemes of a Mutual Fund (Other than the Amount Received on Account of Transfer from One Scheme to Another Scheme of That Mutual Fund).</td>
<td>The Mutual Fund as May Be Dully Authorised by the Trustee in This Behalf.</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>Receipt from Any Person for Sale of Foreign Currency Including Any Credit of Such Currency to Foreign Exchange Card or Expense in Such Currency Through a Debit or Credit Card or Through Issue of Travelers Cheque or Draft or Any Other Instrument of an Amount Aggregating to ₹ 10 Lakh or More During a Financial Year</td>
<td>Authorised Person as Referred to in Section 2(c) of the Foreign Exchange Management Act, 1999.</td>
<td></td>
</tr>
<tr>
<td>Purchase or Sale by Any Person of Immovable Property for an Amount of ₹ 30 Lakhs or More or Valued by the Stamp Valuation Authority Referred to in Section 50C at ₹ 30 Lakhs or More</td>
<td>Inspector-General Appointed Under the Registration Act, 1908 or Registrar or Sub-Registrar Appointed Under That Act</td>
<td></td>
</tr>
<tr>
<td>Receipt of Cash Payment Exceeding ₹ 2 Lakh for Sale, by Any Person, of Goods or Services of Any Nature (Other Than Those Specified at Sl. Nos. 1 to 10 Above, If Any).</td>
<td>Any Person Who is Liable for Audit Under Section 44AB.</td>
<td></td>
</tr>
</tbody>
</table>

**Manner of application of threshold limit:** The reporting person mentioned in column (3) of the Table [other than the person at Sl.No.10 and 11] shall, while aggregating the amounts for determining the threshold amount for reporting in respect of any person as specified in column (2) of the said Table,-

(a) take into account all the accounts of the same nature as specified in column (2) of the said Table maintained in respect of that person during the financial year;

(b) aggregate all the transactions of the same nature as specified in column (2) of the said Table recorded in respect of that person during the financial year;

(c) attribute the entire value of the transaction or the aggregated value of all the transactions to all the persons, in a case where the account is maintained or transaction is recorded in the name of more than one person;

(d) apply the threshold limit separately to deposits and withdrawals in respect of transaction specified in item (c) under column (2), against Sl. No.1 of the said Table.
23.10 PUBLICATION OF INFORMATION [SECTION 287]

The Central Government is empowered to publish the name and address of any assessee and other particulars relating to any proceedings or prosecutions in respect of such assessees, if it considers it necessary or expedient in the public interest to do so. However, no such publication relating to any penalty or prosecution shall be made until the time for presenting appeal to the Commissioner (Appeals) has expired without an appeal having been presented or until the appeal, if presented, has been disposed of. In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers, or managers of the company or members of the associations, as the case may be, may also be published if, in the opinion of the Central Government, the circumstances of the case justify the same.

23.11 APPEARANCE BY REGISTERED VALUERS [SECTION 287A]

Any tax payer who is entitled to or required to attend before any income tax authority or the Appellate Tribunal in connection with any matter relating to the valuation of any asset, otherwise than he is required under section 131 to attend personally for examination on oath or affirmation, may attend by a registered valuer. For this purpose, a registered valuer means a person who is registered as a valuer for the purpose of section 34AB of the Wealth-tax Act, 1957.

23.12 APPEARANCE BY AUTHORISED REPRESENTATIVE [SECTION 288]

1. Section 288 deals with appearance by authorised representative. Accordingly, any assessee who is entitled or required to attend before any income-tax authority of the Appellate Tribunal in connection with any proceeding under this Act otherwise than when required under section 131 to attend personally for examination on oath or affirmation, may attend by an authorised representative.

2. For the purpose of this section, “authorised representative” means, a person authorised by the assessee in writing to appear on his behalf. The following persons can be authorised representatives:
   (a) A person related to the assessee in any manner by a person regularly employed by the assessee
   (b) any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings
   (c) any legal practitioner who is entitled to practice in any Civil Court in India
   (d) an Accountant i.e., a chartered accountant as defined in section 2(1)(b) of the
Chartered Accountants Act, 1949 who holds a valid certificate of practice under section 6(1) of that Act. However, the following persons are not included in the definition of accountant -

<table>
<thead>
<tr>
<th>Asseesee</th>
<th>Person</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Company</td>
<td>A person who is not eligible for appointment as an auditor of the said company under section 141(3) of the Companies Act, 2013, namely,</td>
</tr>
<tr>
<td></td>
<td>(a) A body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;</td>
</tr>
<tr>
<td></td>
<td>(b) an officer or employee of the company</td>
</tr>
<tr>
<td></td>
<td>(c) a person who is a partner, or who is in the employment, of an officer or employee of the company</td>
</tr>
<tr>
<td></td>
<td>(d) a person who, or his relative or partner –</td>
</tr>
<tr>
<td></td>
<td>(i) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company</td>
</tr>
<tr>
<td></td>
<td>(ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 5 lakh.</td>
</tr>
<tr>
<td></td>
<td>(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 1 lakh.</td>
</tr>
<tr>
<td></td>
<td>(e) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed.</td>
</tr>
<tr>
<td></td>
<td>(f) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel.</td>
</tr>
</tbody>
</table>

\[\text{However, the relative may hold security or interest in the company of face value not exceeding ₹ 1,000 or such sum as may be prescribed.}\]
(g) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies

(h) a person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction

(i) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised services as provided in section 144 of the Companies Act, 2013.

| (ii) | Individual | The assessee himself or his relative |
| (iii) | Firm | Partner of the firm or his relative |
| (iv) | AOP | Member of the AOP or his relative |
| (v) | HUF | Member of the HUF or his relative |
| (vi) | Trust or Institution | The author of the trust or founder of the institution or his relative |
| | | Any person who has made a substantial contribution to the trust or institution, i.e., any person whose total contribution upto the end of the relevant previous year exceeds ₹ 50,000, or his relative |
| | | Where such author, founder or person is a HUF, a member of the HUF or relative of such member |
| | | Any trustee of the trust or manager of the institution, or relative of the trustee or manager |
| (vii) | Any other person | The person who is competent to verify the return under section 139 in accordance with the provisions of section 140 or his relative. |
| (viii) | Any assessee referred to in (ii) to (vii) | An officer or employee of the assessee |
| | | An individual who is a partner, or who is in the employment, of an officer or employee of the assessee. |
| | | An individual who, or his relative or partner - |
| | | (I) is holding any security of, or interest in, the assessee4. |

---

4However, the relative may hold security or interest in the assessee of the face value not exceeding ₹ 1 lakh
(II) is indebted to the assessee\(^5\).

(III) has given a guarantee or provided any security in connection with the indebtedness of any third person to the assessee\(^6\).

(4) a person who, whether directly or indirectly, has business relationship with the assessee of such nature as may be prescribed.

(5) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction.

However, the ineligibility for carrying out any audit or furnishing of any report/certificate in respect of an assessee shall not make an accountant ineligible for attending income-tax proceeding referred to in section 288(1) as authorised representative on behalf of that assessee.

(e) any person who has passed any accountancy examination recognised in this behalf by the Board. Rule 50 prescribes the accountancy examination recognised for this purpose. They are as follows:

(i) The National Diploma in Commerce awarded by the All India Council for Technical Education under the Ministry of Education, New Delhi, provided the diploma-holder has taken Advanced Accountancy and Auditing as an elective subject for the Diploma Examination

(ii) Government Diploma in Company Secretaryship awarded by the Department of Company Affairs under the Ministry of Industrial Development and Company Affairs, New Delhi

(iii) Final Examination of the Institute of Company Secretaries of India, New Delhi

(iv) The Final Examination of the Institute of Cost and Work Accountants of India constituted under the Cost and Works Accountants Act, 1959

(v) The Departmental Examination conducted by or on behalf of the Central Board of Direct Taxes for promotion

(vi) The Revenue Audit Examination for Section Officers conducted by the Office of the Comptroller and Auditor General of India

(f) any person who has acquired such education qualifications as the Board may, prescribe for this purpose. Rule 51 prescribes the concerned educational qualifications as follows:

\(^5\)However, the relative may be indebted to the assessee for an amount not exceeding ₹ 1 lakh

\(^6\)However, the relative may give guarantee or provide any security in connection with the indebtedness of any third person to the assessee for an amount not exceeding ₹ 1 lakh
A degree in Commerce or Law conferred by any of the following Universities:

(i) Indian Universities: Any Indian University incorporated by any law for the time being in force.
(ii) Rangoon University
(iv) Scottish Universities: The Universities of Aberdeen, Edinburgh, Glasgow and St. Andrews
(v) Irish Universities: The Universities of Dublin (Trinity College), the Queen’s University, Belfast and the National University of Dublin
(vi) Pakistan Universities: Any Pakistan University incorporated by any law for the time being in force.

3. The following persons shall not be qualified to represent an assessee:

(i) A person who has been dismissed or removed from government service.
(ii) A person who has been convicted of an offence connected with any income-tax proceeding or on whom a penalty has been imposed under this Act other than a penalty imposed on him under section 272A(1)(d) - In this case, the person will be disqualified for such time as the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner may, by order, determine.
(iii) A person has become insolvent - In this case, he will be disqualified for a period during which the insolvency continues.
(iv) A person convicted by a court of an offence involving fraud - He shall not be eligible to act as authorised representative for a period of 10 years from the date of such conviction.

4. If any person is a legal practitioner or an accountant and is found guilty of misconduct in his professional capacity by any authority entitled to institute disciplinary proceedings against him, an order passed by that authority shall have effect in relation to his right to attend before an income-tax authority as it has in relation to his right to practice as a legal practitioner or accountant.

5. If a person is not a legal practitioner or an accountant and is found guilty of misconduct in connection with any income-tax proceedings by the prescribed authority, the prescribed authority, may direct that he shall henceforth be disqualified to represent an assessee.
6. Before any order or direction of disqualification under point 3(ii) or 5 above is made, the following conditions must be satisfied:

(a) No such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard.

(b) Any person against whom any such order or direction is made, may within one month of the making of the order or direction, may appeal to the Board to have the order or direction cancelled.

(c) No such order or direction shall take effect until the expiration of one month from the making thereof or, where an appeal has been preferred, until the disposal of the appeal.

7. A person disqualified to represent an assessee under Indian Income-tax Act, 1922 shall stand disqualified under this Act also.

8. Meaning of the term "relative" for the purpose of section 288:

23.13 ROUNDING OFF OF INCOME, TAX ETC. [SECTIONS 288A & 288B]

(1) The total income of any assessee shall be rounded off to the nearest multiple of ten rupees.

(2) Further, any amount payable, and the amount of refund due, under the provisions of the Income-tax Act, 1961, shall be rounded off to the nearest multiple of ten rupees.
(3) For the above purposes, any part of a rupee consisting of paise shall be ignored. Thereafter, if such amount is not a multiple of ten, then, if the last figure in that amount is five or more, the amount shall be increased to the next higher amount which is a multiple of ten and if the last figure is less than five, the amount shall be reduced to the next lower amount which is a multiple of ten.

**23.14 RECEIPT [SECTION 289]**

The Department or the person or authority receiving any money paid by or recovered from the assessee or any other person shall issue a receipt for the same.

**23.15 INDEMNITY [SECTION 290]**

Every person deducting, retaining or paying any tax in pursuance of this Act in respect of income belonging to another person is entitled to be indemnified for the deduction, retention or payment thereof.

**23.16 POWER TO TENDER IMMUNITY FROM PROSECUTION [SECTION 291]**

The Central Government is empowered by section 291 to tender any person immunity from prosecution for any offence under this Act if it is of the opinion that it is necessary or expedient in the public interest to do so for the purpose of obtaining the evidence directly or indirectly concerned in or privy to the concealment of the income or to the evasion of payment to tax on any income taxable under the Act. A tender of immunity made to or accepted by the person concerned shall, to that extent, render him immune from prosecution for any offence in respect of which tender was made or from the imposition of any penalty under the Act.

**23.17 COGNIZANCE OF OFFENCES AND BAR OF SUITS IN CIVIL COURTS [SECTIONS 292 AND 293]**

(1) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

(2) No suit can be brought in any Civil Court to set aside or modify any order and no prosecution, suit or other proceedings shall lie against any Government Officer for any thing done or intended to be done by him in good faith under the Act.
23.18 CERTAIN LAWS NOT TO APPLY [SECTION 292A]

This section provides that the provisions of section 360 of the Code of Criminal Procedure, 1973 or the Probation of Offenders Act, 1958 shall not be applicable to any person who is convicted of an offence under the Income tax Act, 1961 unless that person is under 18 years of age.

23.19 RETURN OF INCOME ETC. NOT TO BECOME INVALID [SECTION 292B]

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 [Refer also to section 139(9)].

23.20 NOTICE DEEMED TO BE VALID IN CERTAIN CIRCUMSTANCES [SECTION 292BB]

(1) This section provides that the assessee would be precluded from raising any objection in any proceeding or inquiry that the notice was not served upon him or was not served in time or was served in an improper manner if he had appeared in any proceedings or co-operated in any enquiry relating to assessment or reassessment.

(2) In short, if the assessee had appeared in any proceedings or co-operated in any enquiry, it shall be deemed that any notice required to be served on him has been duly served upon him in time in accordance with the provisions of the Act. However, such deeming provision would not apply where the assessee has raised an objection (regarding non-service of notice or non-service of notice in time or improper service of notice) before the completion of such assessment or reassessment.

23.21 PRESUMPTION AS TO ASSETS, BOOKS OF ACCOUNT, ETC. [SECTION 292C]

(1) Under section 132(4A), it is provided that the books of account, money, bullion, jewellery or other valuable article or thing found in the possession or control of any person in the course
of a search under section 132 will be presumed to belong to the said person.

(2) It is further provided that it will be presumed that -

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

(ii) the signature and every other part of such books of account and other documents which purport to be in 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, and

(iii) 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.

(3) The Supreme Court, in P.R. Metrani v. CIT (2006) 287 ITR 209, held that the aforesaid presumption is not available for framing regular assessment and such presumption is available only in regard to the proceedings for search and seizure under section 132. However, this decision did not reflect the correct intent of law.

(4) Therefore, section 292C was inserted to clarify that presumptions provided in section 132(4A) can be made in any proceeding under this Act.

(5) 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

(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.

(6) 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.

23.22 AUTHORITY EMPOWERED TO GRANT AN APPROVAL UNDER THE INCOME TAX ACT, 1961 DEEMED TO HAVE POWER TO WITHDRAW THE APPROVAL GRANTED [SECTION 293C]

(1) The Central Government, CBDT and income-tax Authorities are empowered under the various provisions of the Income-tax Act to grant approval to the assessee for availing the benefit of incentives available under the Act.

(2) However, only some provisions of the Income-tax Act, 1961 specifically contain provisions for withdrawal of approval. In all other cases, there is no specific power to withdraw the approval granted.

(3) Therefore, section 293C provides explicitly, such power to withdraw an approval granted. This section provides that an approval granting authority (i.e. the Central Government, CBDT or income-tax authority, as the case may be) shall also have the powers to withdraw the approval at any time.

(4) However, such withdrawal can be made only after giving a reasonable opportunity to the concerned assessee of showing cause against the proposed withdrawal. Further, the reasons for withdrawal of the approval should be recorded by the concerned authority.

23.23 ACT TO HAVE EFFECT PENDING LEGISLATIVE PROVISION FOR CHARGE OF TAX [SECTION 294]

If on the 1st April in any assessment year, provision has not yet been made by a Central Act for the charging of income-tax for that assessment year, this Act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding assessment year or the provision proposed in the Bill then before Parliament, whichever is more favourable to the assessee, were actually in force.

23.24 RULES [SECTIONS 295 AND 296]

Section 295 authorises the CBDT to make rules for the whole or any part of India for carrying out the purposes and to implement the provisions of the Act. The powers of the Board in this regard are subject to the supervision and control of the Central Government. The Rules framed by the Board and approved by the Central Government are required to be placed before each House of
the Parliament before enforcing the same. In exercise of the powers conferred on it by this section,
the Board, with the approval and sanction of the Central Government and the Parliament, has
framed the Income-tax Rules, 1962 which have been amended from time to time. This section also
enumerates the important matters on which rules may be framed by the Board: the rules framed
under this Act have the same force of the section of the Act. The rules must be interpreted in the
light of the sections under which they have been made. But the rules should be so framed as not
to adversely affect or derogate from the full operative effect of the provisions of the sections. The
rules must be within the term of the mandate given to the Board and must be framed in such a way
as to be consistent with and supplementary to the provisions of the Act.

23.25 SCHEDULES TO THE INCOME TAX ACT, 1961

There are fourteen Schedules to the Income-tax Act, 1961. The matters dealt with in certain
schedules are highlighted below:

Schedule I  Method of computing profits and gains of Insurance business Section 44
Schedule II  Procedure for Recovery of Tax
Schedule III  Procedure for distraint by Assessing Officer or Tax Recovery Officer
Schedule IV  Recognised Provident Funds, approved superannuation funds and approved
gratuity funds
Schedule VII  Containing a list of minerals and group of associated minerals in the context of
section 35E.
EXERCISE

Question 1

How does the income of a person who is trying to alienate his assets with a view to avoid tax be dealt with under the Act?

Answer

The income of a person who is trying to alienate his assets with a view to avoid tax will be dealt with as per the provisions of section 175.

Accordingly, if it appears to the Assessing Officer during any current assessment year that any person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets with a view to avoiding payment of any liability under the Income-tax Act, 1961, the total income of such person for the period from the expiry of the previous year to the date when the Assessing Officer commences proceedings under this section is chargeable to tax in that assessment year.

The total income of each completed year or part of any previous year included in such period shall be chargeable to tax at the rates in force in that assessment year and separate assessments will be made for each completed previous year or part of any previous year.

The Assessing Officer may estimate the income of such individual for such period or any part thereof, where it cannot be readily determined in the manner provided in the Act.

The tax chargeable under this section shall be in addition to tax, if any, chargeable under any other provision of the Act.

Question 2

Fearless General Finance & Investment Limited, a residuary non-banking company, accepts public deposits, issues deposit certificate and repays the same after some period of time along with interest, under different schemes run by it. Following transactions were noted from their books of account:

(i) Mr. A, an individual, has deposited ₹ 15,000 on 1st May, 2016 for 48 months by bearer cheque and another ₹ 15,000 on 30th June, 2019 in cash to purchase a new certificate of 48 months tenure.

(ii) Mr. A has applied for premature withdrawal against both the certificates and the company has paid him ₹ 16,500, by a bearer cheque, against principal and interest on 23rd March, 2020, due against his first certificate (purchased in 2016) and ₹ 15,500 in cash on 25th March, 2020, against the second certificate.

Discuss the violation of income tax provision, if any, and consequential penalty for each transaction. Will it make any difference if the certificates were held by Mr. A with his wife Mrs. A, jointly, while repaying back in cash or bearer cheque?
Answer

(i) There is no violation of section 269SS at the time of acceptance of the first deposit of ₹ 15,000 by bearer cheque on 1.5.2016, since it is not in excess of the threshold limit of ₹ 20,000. However, violation under section 269SS is attracted at the time of acceptance of the second deposit in cash on 30th June, 2019, since as on that date, there is already an outstanding deposit of ₹ 15,000 and another cash deposit of ₹ 15,000 would take the aggregate to ₹ 30,000, which exceeds the threshold limit of ₹ 20,000. Therefore, penalty under section 271D of a sum equal to the amount of deposit taken from Mr. A is attracted for failure to comply with the provisions of section 269SS.

(ii) In this case, there is a violation of the provisions of section 269T at the time of first repayment by bearer cheque on 23rd March, 2020, since on that date, the aggregate amount of deposits held by Mr. A with the non-banking company (together with interest payable on such deposits) is more than ₹ 20,000. Therefore, penalty under section 271E equal to the amount of deposit so repaid will be attracted for failure to comply with the provisions of section 269T.

However, the second repayment of ₹ 15,500 on 25th March, 2020 in cash cannot be considered as a violation of section 269T, since neither the amount of deposit with interest thereon nor the aggregate amount of deposits held by Mr. A on that date together with interest exceeds the threshold limit of ₹ 20,000.

The provisions of section 269T will be attracted at the time of first repayment of bearer cheque even if the certificate is being held by Mr. A in joint name with his wife.

Question 3

The proceedings before the Income-tax Authorities either can be attended by the assessee in person or through an authorized representative. Who can be treated as an authorized representative of the assessee?

Answer

As per section 288, the proceedings before the income-tax authorities can be attended by an assessee in person or through an authorised representative, i.e., a person authorized by the assessee in writing to appear on his behalf, being -

(i) a person who is a relative or a regular employee of the assessee; or

(ii) any officer of a Scheduled Bank in which the assessee maintains a current account or has other regular dealings; or

(iii) a legal practitioner who is entitled to practise in any civil court in India; or

(iv) a chartered accountant within the meaning of the Chartered Accountants Act, 1949 who hold a valid certificate of practice.
(v) any person who has passed any accountancy examination recognized in this behalf by the CBDT for this purpose; or

(vi) any person who has acquired such educational qualifications as prescribed by the CBDT; or

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

(viii) any person who was actually practising as an income-tax practitioner, immediately before commencement of the Income-tax Act, 1961.

Question 4

An order for A.Y. 2018-19 was passed by the Assessing Officer as per section 143(3), but the typist wrongly typed in the order, the assessment year as A.Y.2017-18 and the relevant previous year as ending on 31.3.2017. The assessee claimed in appeal that the same is an invalid order which was not accepted by the CIT (Appeals) on the ground of the error being of clerical nature. Discuss the correctness of the order of the CIT(Appeals).

Answer

Section 292B provides that no return of income, assessment, notice or summons furnished or made or issued or taken in pursuance of any of the provisions of the Income-tax Act, 1961 shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons etc., if such return of income, assessment, notice, summons etc. is in substance and effect in conformity with or according to the intent and purpose of the Act. Therefore, a clerical mistake cannot invalidate an otherwise valid assessment. Thus, the typographical error in the assessment order as to assessment year and previous year does not make the same invalid unless established otherwise. Accordingly, the action of the CIT(Appeals) in not accepting the claim of the assessee is valid.

Question 5

“Proceedings cannot be initiated under the Act, unless a proper notice to this effect has been served upon.” In this context answer:

(i) What are the prescribed modes of service of such notice?

(ii) On whom should the notice be addressed and served upon in the cases where the assessee is a dissolved firm, a deceased person and a partitioned HUF.

Answer

(i) As per section 282(1), the service of notice or summons or requisition or order or any other communication under this Act may be made by delivering or transmitting a copy thereof to the person named therein -
MISCELLANEOUS PROVISIONS

(1) by post or such courier services as approved by the CBDT; or
(2) in such manner as provided in the Code of Civil Procedure, 1908 for the purposes of service of summons; or
(3) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000; or
(4) by any other means of transmission of documents as may be provided by rules made by the CBDT in this behalf.

The CBDT is empowered to make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which such communication may be delivered or transmitted to the person named therein.

(ii) The service of notice in the given cases should be on the persons mentioned hereunder:

<table>
<thead>
<tr>
<th>Person</th>
<th>Notice to be addressed and served on</th>
</tr>
</thead>
<tbody>
<tr>
<td>A dissolved firm</td>
<td>Any person who was a partner (not being a minor) immediately before dissolution.</td>
</tr>
<tr>
<td>A deceased person</td>
<td>The legal heirs of the deceased.</td>
</tr>
<tr>
<td>A partitioned HUF</td>
<td>Last Manager of the HUF, or, if he is dead, then, all adult members of the erstwhile HUF.</td>
</tr>
</tbody>
</table>

Question 6

"Tax Recovery Officer, can recover the arrear demands from the assessee in default out of sale proceeds of the property attached after making a proclamation". How can such proclamation be made under the Act? Is there any time limit for sale of attached immovable property? Discuss.

Answer

Manner of making a proclamation

Movable Property [Rules 38 & 39 of Schedule II to the Income-tax Act, 1961]

Where the Tax Recovery Officer orders sale of movable property, he should issue a proclamation in the language of the district, of the intended sale, specifying the time and place of sale and whether the sale is subject to confirmation or not.

The proclamation should be made by beat of drum or other customary mode, -

(a) in the case of property attached by actual seizure –
   (i) in the village in which the property was seized, or, if the property was seized in a town or city, then, in the locality in which it was seized; and
   (ii) at such other places as the Tax Recovery Officer may direct;
(b) in the case of property attached otherwise than by actual seizure, in such places, if any, as the Tax Recovery Officer may direct.

A copy of the proclamation should also be affixed in a conspicuous part of the office of the Tax Recovery Officer.

**Immovable Property [Rule 54 of Schedule II to the Income-tax Act, 1961]**

The Tax Recovery Officer shall make a proclamation for sale of immovable property at some place on or near such property by beat of drum or other customary mode. A copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Tax Recovery Officer.

Where the Tax Recovery Officer directs, such proclamation shall also be published in the Official Gazette or in a local newspaper or in both, and the cost of such publication shall be deemed to be cost of the sale.

Where the property to be sold is divided into lots for the purpose of being sold separately, then it is not necessary to make a separate proclamation for each lot of property, unless in the opinion of the Tax Recovery Officer, proper notice of sale cannot otherwise be given.

**Time limit for sale of attached immovable property [Rule 68B of Schedule II to the Income-tax Act, 1961]**

The sale of immovable property attached has to be made on or before the expiry of 7 years from the end of the financial year in which the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached,

- has become conclusive under the provisions of section 245-I (where order of settlement under section 245D(4) is deemed to be conclusive as to the matters stated therein) or

- has become final in terms of the provisions of Chapter XX (Appeals and Revision).

However, the CBDT may, for reasons to be recorded in writing, extend the aforesaid period for a further period not exceeding 3 years.

**Question 7**

*Explain the circumstances under which the Assessing Officer can resort to provisional attachment of the property of the assessee. Also, state the period of time for which such attachment can take place.*

*When can the Assessing Officer revoke provisional assessment of property? Discuss.*

**Answer**

As per the provisions of section 281B, there can be provisional attachment to protect the interest of Revenue in certain cases i.e.-
(i) The proceeding for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment should be pending.

(ii) Such attachments should be necessary for the purpose of protecting the interest of Revenue in the opinion of the Assessing Officer.

(iii) The previous approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director has been obtained by the Assessing Officer.

(iv) The Assessing Officer may, by an order in writing attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.

(v) Such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of order made under section 281B(1). However, the period can be extended by the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director, as the case may be, for the reasons to be recorded in writing for a further period or periods as he thinks fit. The total period of extension in any case cannot exceed 2 years or 60 days after the date of order of assessment or reassessment, whichever is later.

The Assessing Officer shall, by order in writing, revoke provisional attachment of a property made under section 281B(1) in a case where the assessee furnishes a guarantee from a scheduled bank, for an amount not less than the fair market value of such provisionally attached property or for an amount which is sufficient to protect the interests of the revenue.

Question 8

Mr. Biswas, a stock broker, has defaulted with regard to his income-tax payments and the Assessing Officer has attached his membership card of Stock Exchange under section 281B of the Income-tax Act, 1961. Mr. Biswas contends that the membership card is not transferable and is not his personal asset. Discuss the validity of attachment of the card by the Assessing Officer in the context of Section 281B.

Answer

The right of membership is not a private asset and it is merely a personal privilege granted to the member. It is non-transferable and incapable of alienation by the member or his legal representative except to the limited extent provided in the rules and regulations of the stock exchange and subject to the fulfillment of conditions prescribed by the stock exchange. The nomination, even if permitted, is subject to the rules and is not automatic. The right of nomination is vested in the stock exchange absolutely in the case of death of or default of a member. Thus, the membership card is not the property of the assessee and therefore cannot be attached under section 281B. It has been so held by the Apex Court in the case of Stock Exchange Ahmedabad vs. ACIT (2001) 248 ITR 209.
1. **Whether omission to issue notice under section 143(2) is a defect not curable in spite of section 292BB?**

   *Travancore Diagnostics (P) Ltd v. Asstt. CIT (2017) 390 ITR 167 (Ker)*

   **Facts of the case:** The assessee had a diagnostic laboratory in Kollam and a branch at Kottarakara. A survey under Section 133A was conducted, consequent to which the assessee filed its return of income. On the basis of certain incriminating documents and materials unearthed during the survey, a notice under section 148 was issued. Subsequently, the incomes were assessed for assessment years 2009-10 and 2010-11 under section 143(3) read with section 147.

   The assessee raised additional jurisdictional grounds before the Appellate Tribunal. The assessee contended that for the assessment year 2009-10, the assessment was completed under section 143(3) read with section 147. However, a notice under section 143(2) was not issued. The Tribunal held that in view of section 292BB, the assessee’s participation in the reassessment proceedings would condone the omission to issue a notice.

   **Issue:** Whether failure to issue notice under section 143(2) would vitiate the assessment notwithstanding the assessee’s participation in the proceedings? Would section 292BB come to the rescue of the Revenue authority if they omit to issue notice under section 143(2)?

   **High Court’s Decision:** The Apex Court had, in *Asstt. CIT v. Hotel Blue Moon (2010) 321 ITR 362*, held that without the statutory notice under section 143(2), the Assessing Officer could not assume jurisdiction. Here, Assessing Officer recorded his inability to generate a notice as the return was not filed electronically. Such defect cannot be cured subsequently, since it is not procedural but one that goes to the root of the jurisdiction. Even though the assessee had participated in the proceedings, in the absence of mandatory notice, section 292BB cannot help the Revenue officers who have no jurisdiction, to begin with. Section 292BB helps Revenue in countering claims of assessee who have participated in proceedings once a due notice has been issued.

2. **Can the Assessing Officer *suo moto* assume jurisdiction to declare sale of property as void under section 281?**

   *Dr. ManojKabra v. ITO (2014) 364 ITR 541 (All)*

   **Facts of the case:** The assessee acquired a property for ₹ 7 lakhs though the stamp duty was paid in accordance with the circle rate which was ₹ 12 lakhs. Pursuant to the sale deed, the assessee took possession of the property. Prior to the sale, the income tax assessment of vendor had been completed and a certain demand was raised against him in respect of the assessment year when the sale of the property was effected. The Assessing
Officer issued a notice under section 281 to show cause as to why the sale deed executed in his favour (assessee-buyer) should not be treated as a void document. The assessee-buyer contended that he was a *bona fide* purchaser for adequate consideration and no notice of pendency of proceedings was to known him nor was it brought to his knowledge by the seller.

The assessee placed reliance on the decision of Supreme Court in the case of *TRO v. Gangadhar Vishwanath Ranade (Decd.)* (1998) 234 ITR 188, where it was held that section 281 of the Income-tax Act, 1961 is only a declaratory provision and not an adjudicatory provision entitling the income-tax authority to declare a document as a void document.

**High Court's Observation:** The High Court observed that the issue in this case was squarely covered by above Apex Court decision which held that the legislature had no intention to confer any exclusive power or jurisdiction upon the income-tax authority to decide any question arising under section 281. The Income-tax Act, 1961, does not prescribe any adjudicatory machinery for deciding any question which may arise under section 281. In order to declare a transfer as fraudulent under section 281, an appropriate proceeding in accordance with law was required to be taken under section 53 of the Transfer of Property Act, 1882. The Assessing Officer is required to file a suit for declaration to the effect that the transaction of transfer was void under section 281 of the Income-tax Act; but he himself cannot assume jurisdiction to declare the sale deed as void.

**High Court’s Decision:** Applying the rationale of the Apex Court ruling, the High Court held that the Assessing Officer has no jurisdiction under section 281 to *suo moto* declare the sale as void.

3. Is non-issuance of notice under section 143(2) by the Assessing Officer a defect not curable under section 292BB inspite of participation by the assessee in assessment proceedings?

*CIT v. Laxman Das Khandelwal (2019) 417 ITR 325 (SC)*

**Relevant provision of the Income-tax Act, 1961:** Issue of notice under section 143(2) is mandatory for making a regular assessment under section 143(3). Section 292BB is a deeming provision that seeks to cure defects in any notice issued under any provision of the Income-tax Act, 1961, if the assessee has participated in the proceedings. Section 292BB provides that where the assessee has participated in the proceedings, any notice which is required to be *served* upon him shall be deemed to have been duly served and the assessee would be precluded from taking any objection 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.
**Issue:** The issue under consideration is whether the Assessing Officer’s omission to issue notice under section 143(2) is a defect not curable under section 292BB in spite of participation by the assessee in assessment proceedings.

**Supreme Court’s Observations:** The law on the point as regards applicability of the requirement of issue of notice under section 143(2) is quite clear. According to section 292BB, if the assessee had participated in the proceedings, by way of legal fiction, notice issued would be deemed to be valid even if there be infractions as detailed in the said section. The scope of the provision is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on the part of the assessee. It is, however, to be noted that the section does not save complete absence of issue of notice. **For section 292BB to apply, the notice must have emanated from the Department.** It is only the infirmities in the manner of service of notice that the section seeks to cure. The section is not intended to cure complete absence of notice itself.

**Supreme Court’s Decision:** The Supreme Court held that non-issuance of notice under section 143(2) is not a curable defect under section 292BB in spite of participation by the assessee in assessment proceedings.