

INCOME TAX ASSESSMENT PROCEEDINGS

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AGENDA:

1. Meaning of certain terms
2. Types of assessments
3. Selection of cases for Scrutiny
4. Books of Accounts, Documents/Evidences
5. Burden of Proof
6. Proving Income
7. Methods of determination of income
8. Verification assets
9. Appeals

Meaning of certain terms:

1. Assessment:

The action of *evaluation* of someone or something.

As per Sec 2(8) “assessment” includes reassessment.

2. Scrutiny:

Critical observation or examination

3. Appeal:

An *application to a higher authority* for a decision to be reversed.

4. Survey:

Examination of someone or something

5. Search:

Try to *find something* by looking or seeking carefully and thoroughly

6. Seizure

The action of capturing something *using force*

7. Notice

To bring someone's attention towards something

8. Show Cause Notice

Issued by concerned authority in writing why any action should not be taken on assessee.

TYPES OF ASSESSMENTS:

- 1. Self-Assessment**
- 2. Summary Assessment**
- 3. Scrutiny Assessment**
- 4. Best Judgment Assessment**
- 5. Block assessment**

Self-Assessment [140A]:

Tax is payable on the basis of any return furnished U/s 139/142/148/153A/158BC, after deducting advance tax/TDS/TCS, the assessee is required to pay tax before filling the Income Tax Return.

Summary Assessment [143(1)]:

AO can complete the assessment *without calling the assessee*.

If any tax or interest is found due on the basis of return then the intimation issued, intimation is deemed to be notice of demand issued U/s156.

Time limit for Intimation [143(1)(i)]:

One year from the end of the financial year in which return of income is submitted.

For Eg., for the AY 2018-19, date of filing of return is 01/08/2018, an intimation may be sent up to 31/03/2020.

Scrutiny Assessment [143(3)]:

AO serves notice on the assessee requiring him to appear on the specified date and time or to furnish any document /evidence in support of his return.

Time Limit to Issue Notice: Within 6Months from the end of the FY in which return is filed.

Duty of the Assessee:

- Appear before AO either in person or through authorized representative.
- Submission of documents/evidences as required by AO
- Penalty [271(1)(b)]: Rs.10,000 for each such failure

Duty of AO:

- The AO is bound to issue an assessment order *within a period of 21 Months from the end of the assessment year* in which the income was first assessable.

For instance, for the Return AY 2018-19, order needs to be passed by 31/12/2020

Remedies available to the assessee in case of Unfavorable Orders:

1. Rectification U/s 154 – Mistake apparent on the record
2. File an appeal with CIT(A)
3. Apply for revision of assessment order to the CIT

Selection of Scrutiny Cases:

CBDT issues Guidelines for selection of Scrutiny Cases

1. Manual Selection
2. Computer Aided Scrutiny Selection(CASS)

Manual Selection:

1. Cases Involving addition in an earlier year
Metros - Exceeds 25L
Others - Exceeds 10 L
TP Cases - Exceeds 10 Cr
2. All assessments pertaining to Survey U/s 133A
3. Assessments of Search and seizure
4. Registrations cancelled/not granted U/s 12A or 10(23C)
5. Any specific and verifiable information given by Govt
Dept/ Authority with prior approval of Pr CIT

Computer Aided Scrutiny Selection (CASS):

Based on the AIR/26AS/CIB [Central Information Branch] may issue notice for Limited Scrutiny or Complete Scrutiny.

Best Judgment Assessment [144]:

The AO passes Assessment Order after considering all the relevant information *he gathered* in the following cases:

- 1. Fails to comply with the notice U/s 142(1) [return not filed U/s 139(1) or before the end of AY]**
2. Fails to comply with special audit from an account U/s 142(2A)
3. Fails to comply with the notice U/s 143(2) – Scrutiny Assessment
4. If AO not satisfied about the correctness/completeness/method of accounting employed by assessee

A refund cannot be granted U/s 144

Block Assessment:

In cases of search, *undisclosed income determined* as a result of search U/s 132 or requisition (an official order to claim the use of materials) of books of accounts shall be assessed on a de novo (starting from the beginning) basis.

BOOKS OF ACCOUNTS:

Features:

1. Complied with ICDS
2. Identify sources of Income
3. Keep Track of expenses
4. Keep track of the basis of property
5. Helps in preparing tax returns
6. Supports items reported in tax returns

Method of accounting [145]:

Accepted either Mercantile System or Cash System consistently. An assessee is entitled to change method of accounting, where there is bona fide (genuine) intention.

What Constitute Evidence?

1. Circumstantial Evidence:

Like: gifts on occasion of marriage, payment of cash exceeding the limit during bank holiday

2. Affidavit in Evidence

Affidavit is voluntary *declaration of facts in writing*.

Affidavit will be considered as evidence only when there is supporting documentary evidence.

VERIFICATION

I, _____ son/ daughter of _____ solemnly declare that to the best of my knowledge and belief, the information given in the return is correct and complete and is in accordance with the provisions of the Income-tax Act, 1961. I further declare that I am making this return in my capacity as _____ and I am also competent to make this return and verify it. I am holding permanent account number (if allotted).

False statement of Affidavit/Verification [Sec 277 of Evidence Act]:

Tax Evaded more than Rs.1,00,000 - Rigorous imprisonment not less than 6 Months which may extend upto 7 Years AND with Fine

Any other Case - Rigorous imprisonment not less than 3 Months which may extend upto 3 Years AND with Fine

3. Will in Evidence

The genuineness and the validity of the will cannot be assailed by the authority.

4. Documents in Evidence

Internal/ external Evidence

In Case of Tax Planning:

Transfer of property by will to relative: Original WILL should be available for production before the AO.

Formation of HUF:

- Creation through Will
- Through inheritance by succession
- Family arrangements/settlements
- Partition of HUF

Gifts:

Identity of the Person making the gift

Creditworthiness of person making the gift

Source of money gifted

Relationship between the donor and donee

Occasion/justification for making gift

5. Entries in books

Ordinarily AO should accept the books of accounts, unless AO has some material in his possession contrary to what is stated in the books.

Books of accounts destroyed for any reason then AO has to rely on the audit report.

Burden of Proof:

Can be classified in to two:

1. Legal Onus:

Can be discharged by demonstration through arguments, reference to case laws, statute, other presumptions etc

2. Factual Onus:

Burden of providing a fact and the same is always discharged by proof.

Some Illustrative Cases:

Cases	Burden of proof is on
To show that income liable to tax	AO
To show that income is exempt from tax	Assessee
Delay in filling the return	Assessee
To establish the assessee is guilty of concealment of income	AO
Transfer without sufficient consideration	AO
Gifts from relatives which is not taxable	Assessee
Proof of Deductions claimed	Assessee
Cash Credits	Assessee
A sum of money found	Assessee

METHODS OF DETERMINATION OF INCOME

1. Source Method
2. Application/Investment Method
3. Net Worth Method

Source Method:

Under this method various sources are examined like different businesses, rents, commissions etc and compare the cases having similar nature of income to arrive at the realistic estimate.

- Even its, an estimate statutory allowances should be allowed separately like Standard deduction, depreciation allowance etc.
- Once income is arrived based on the net profit basis – no addition to be made on account of unexplained cash or unaccounted purchases.
- Need to consider the difference between profit earned with own capital and profit earned with borrowed capital.
- On account of stock shortage, addition can be made only to the extent of gross profit.

Limitation:The income arrived under this method cannot be less the aggregate of amounts invested and expenses incurred.

Application/Investment Method:

This method is applied when there is no information available in respect of various sources of income.

- Addition of unexplained investment – Explanation furnished by the is not satisfactory.
- Valuation of investments by valuation officer

Net Worth Method:

Determination of Income is the difference between the incremental assets Less Incremental Liabilities.

Verification of Assets/receipts:

1. Cost of Construction/Valuation of Property:

No issue when books of accounts are accepted, otherwise reference to valuation officer.

2. Cash Credits:

Genuineness of Cash credits can be discharged by doing following:

- Producing Creditor before AO
- Filling Confirmation letters
- Filling an affidavit made by the creditor
- Furnishing the name and full address to the AO, AO will summon him U/s131 for examination on oath
- Furnishing PAN of the creditor

3. Received from agriculturist:

Production of evidence of irrigated land, cultivated land, crops cultivated, sale proceeds realized by him etc

4. Local/ NRIGifts:

Crossed cheque/ DD, gift deed, affidavit with notarized

5. Ornaments/Jewellery:

Sale and Purchase bills with details of Name, Address, Tax Registration No and mode of payment

6. Inherited assets:

Will, if no will is executed Panchanama of the assets left by the deceased drawn in the presence of witnesses.

APPEALS:

Particular	246A	254	260A	261
Appellate Authority	CIT(A)	ITAT	High Court	Supreme Court
Time Limit for Appeal	30Days from the receipt of order	60 days from the communication of order	120 days from the communication of order	90 days from the communication of order
Time limit for disposal	1 year from the end of the FY	4 year from the end of the FY	As per court procedure	As per court procedure
Fee to be paid (Max)	1,000	10,000	As per court procedure	As per court procedure
Stay of Demand	Not Possible	Possible against CIT(A) Order	Possible	Possible
Recovery of Tax	No power to stay the	Final Order should be	NA	NA

	recovery of Tax	passed within 180 Days from the Stay order passed		
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Q & A

Thank you,

For feedback and clarification contact

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