

The Scrutiny Assessments

The Scrutiny Assessments under Income Tax Act 1961 are made u/s **143(3)**.

Some important points relating to the Assessment and scrutiny Assessment:

When a case is selected for scrutiny:

Where a return has been filed u/s 139 or in response to a notice u/s 142(1), the case can be selected for scrutiny Assessment;

If the assessing officer considers it necessary to ensure that

- The assessee has **not understated** the income , Or
- The assessee has **not computed excessive loss**, Or
- The assessee has **not underpaid the tax** in any manner.

Usually;

- ✓ **amount** of turnover,
- ✓ rate of gross profit,
- ✓ **total** income,
- ✓ **quantum** of loans taken,
- ✓ Investments during the year etc are considered for selecting a case for scrutiny.

However the selection is done on the basis of the ***instructions of the CBDT*** issued every year wherein some predetermined criteria are decided on the basis of which a case is selected for scrutiny Assessment.

- ☞ The Honourable Supreme Court in (1999) 237 ITR 889 and (2004) ITR 272 has held that the **assessing officer is bound by the instructions of the CBDT**.
- ☞ The Delhi High Court giving reference of the above decision of the S.C. has held in (2008) 169 Taxmann 4 / (2007) 295 ITR 256 that the **A.O. cannot make Assessment of any case in scrutiny outside the guidelines issued by the CBDT for selection of cases for scrutiny and if such Assessment is made then it will be illegal**.

Time limit for issuing of Notice u/s 143(2):

As per section 143(2) the notice under section 143(2) must be served upon the assessee **within 6 months from the end of relevant Assessment year.**

- The notice u/s 143(2) must be received by the assessee now up to 30th September for the preceding Assessment year.
- If the notice u/s 143(2) is **not** received within the prescribed time limit then no Assessment can be framed u/s 143(3).

Where the assessee affirms by way of an affidavit that notice u/s 143(2) was not received by him within the prescribed time, the onus lies with the department to conclusively prove that the notice was served upon the assessee within the prescribed time.

- Failure to do so shall lead to set aside of the Assessment as it was held in CIT v Lunar Diamonds Ltd. [2006] 281 ITR 1(Del.).

Section 292BB:

A section 292BB has been added w.e.f. 01-04-2008 which provides that;

- If the assessee has **cooperated in the Assessment or re-assessment proceedings** then it will be treated that the notice u/s 143(2) has been duly served upon the assessee and the assessee will not be able to object to the late or irregular service of notice.

The proviso to section 292BB makes it **further clear that**

- If the assessee has before the Assessment or re-assessment proceedings objected to the no service or late or irregular service of notice u/s 143(2) then section 292BB shall be not applicable.

Therefore if an assessee

- ✓ does not receive the notice or
- ✓ receives the notice u/s 143(2) after the 30th September and
- ✓ He cooperates in the Assessment proceedings and
- ✓ doesn't object to the non receiving or late or irregular receiving of the notice then
- ✓ the Assessment proceedings and the assessment order shall be considered as valid and will not be quashed in the appeal.

What to do when notice U/s 143(2) is received:

When a case is selected for scrutiny Assessment the A.O usually ask for the following

- Books of Accounts
 - Bank Statements
 - Confirmation certificates of Loans if any
 - Name and Addresses of Sundry Creditors, Debtors
 - The account statements of Sundry Creditors and Debtors for verification of transactions
- ▶ In case the A.O. finds any discrepancy the assessee may be asked to explain the same.
- ▶ The assessee has to prove the disputed transaction prima facie appearing in his books of accounts.

The assessee needs to prove the following things:

- Proof of Identity of creditor
- Credibility or capacity of a loan creditor to pay or advance the money
- the genuineness of the transaction

If the assessee prima facie proves a transaction then the onus shifts on the department to rebut the same.

The A.O can only ask for the evidence of the cash credit or the loans which have been taken or given in the relevant previous year and **not about those appearing from preceding years.**

The opportunity of being heard must be provided to the assessee:

The assessee must be provide a fair opportunity of being heard during the Assessment proceedings as it is a basic **rule of Natural Justice.**

If the A.O makes any addition on the basis of evidence procured from other sources about which the assessee is not aware then the assessee must be given fair opportunity to rebut or cross examine such evidence.

In CIT vs Eastern Commercial Enterprises 210 ITR 103(CAL) **it has been held that an addition made without allowing opportunity of cross examination to the assessee, cannot be sustained.**

Amounts Received as gifts:

Where receiving of any gift by the assessee is in question in the Assessment proceedings then

- Affidavit of the donor or the gift deed along with the PAN of the donor, the source of the gift and the relationship of the donee with the donor should be produced to prove such gift.

Additions cannot be made merely on suspicion:

- Any addition to the income of the assessee cannot be made only on the base of suspicion.
- If the assessee has proved the transaction in question then merely on the suspicion the addition cannot be made.
- For Example if the assessee has sufficiently proved a deposit transaction from a person then the A.O *cannot* make addition merely on the ground that the assessee already had enough money on the day of deposit and there was no need for such deposit.

Request for summons to the non- cooperating loan creditor or depositors :

- Sometimes it happens that the depositors or loan creditors do not cooperate with the assessee in the Assessment proceedings then in such cases the **assessee should request the A.O in writing to issue summons u/s 131** to such persons along with their books of accounts or bank statement or any other relevant documents.

Where a Deposit or loan transaction is not proved:

- Sometimes due to non availability of proof regarding a deposit or loan transaction the assessee has to **agree for surrendering such amount as his income**.
- But while surrendering such transactions as income, the assessee should get it written in his statement that he is making surrender **for mental peace and on the condition of non-levying of penalty**.
- Therefore in such case **the penalty will not be imposed u/s 271(1)(c)**.

Additions on the base of inadequate withdrawals:

-  The assessing officer usually during the Assessment proceedings ask the information from the assessee about his household expenses including the number of family members, the children, the school in which they are studying, the expense on their studies, electricity bills, telephone bills, house rents if any, the salary given to any employee or the car , scooter etc owned by them.
-  After considering all the above things the A.O estimates the household expenses of the assessee and after matching the same with the withdrawals shown, the assessing officer tends to make additions to the income of the assessee **if the withdrawals are found to be inadequate.**
-  The assessee should tell the A.O in detail about his household expenses and if any other family member of the assessee has also contributed towards the household expenses, the fact should be brought to the notice of the A.O.
-  Sometimes it is seen that the assesses show their withdrawals for household expenses collectively at the end of the year in which case the assessee has to face many difficulties during the Assessment proceedings. **The withdrawals for household expenses should be shown in every month.**