DRAFTING AND REPRESENTATION IN FACELESS ASSESSMENT

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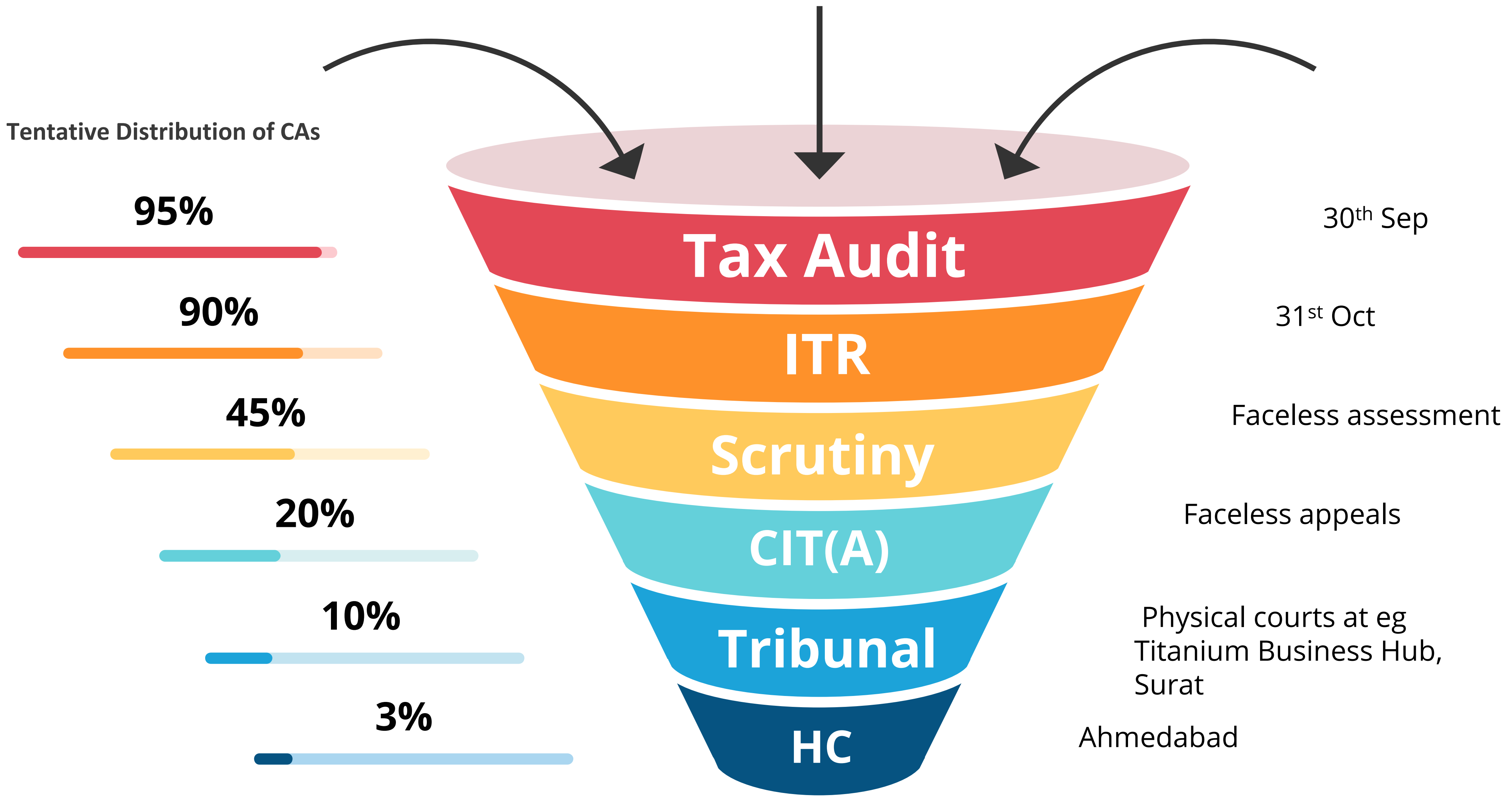

Life Cycle of tax payer

DEMONETISATION 2.0

FACELESS ASSESSMENT AND APPEALS

Introduction to Faceless Assessment

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The Faceless Assessment is one of the biggest Direct Tax reforms in India based on the key principles of Efficiency, Transparency and Accountability.

It was introduced to eliminate the interface between the AO and the assessee during the course of proceedings, to the extent that is technologically feasible, optimise the utilisation of resources through the economies of scale and functional specialisation.

<u>SECTION 144B RELATING TO FACELESS ASSESSMENT</u>

1. 144B(1) – scheme of faceless assessment with <u>32 steps</u>
2. 144B(2) – "The faceless assessment under sub-section (1) shall be made in respect of such territorial area, or persons or class of persons, or incomes or class of incomes, or cases or class of cases, as may be specified by the Board"
3. 144B(3) - Centres and units
4. 144B(4) – Composition of various units
5. 144B(5) and 144B(6) – Internal and External Communications through electronic mode
6. 144B(7) – Mode of communication etc.
7. 144B(8) – In exceptional case, transfer to jurisdictional AO
8. 144B(9) – Assessment not made in accordance with the scheme
9. Explanation – definitions.

Salient Features of the Faceless Assessment:

Data driven selection of cases for Scrutiny using Data Analytics and Artificial Intelligence.

Automated random allocation of cases to Assessment Units through computer.

**

Blue means communication between the Assessee and Department

Red means internal communication between the Department

No human interface and no need to visit the Income Tax Department for hearing as well as for submission of data relating to case.

You shall not be required to attend either in person or through authorized representative before any Income Tax Authority, in connection with these proceedings. If personal hearing is required, same would be through video conferencing only.

As a part of enhanced Taxpayer services and to further streamline the Faceless Assessment process, a dedicated email ID : feedback.notice.neac@incometax.gov.in has been made functional by Income Tax Department, for taxpayers to register feedback pertaining to Faceless Assessment Scheme. This email-ID will be monitored by a team at National e-Assessment Centre.

How would you know that your case has been picked up for faceless e-Assessment?

"

You will receive a notice u/s. 143(2) digitally signed by NFAC officer in your registered account with e-filing followed by real time alert in the form of an SMS and/or e-mail.

Assessee has to file a response within 15 days from the date of receipt of the notice.

Where any notice has already been issued by the AO either u/s 143(2) / 142(1)/ 148 etc., NFAC has to intimate the assessee that assessment shall be completed under this Scheme (for the existing cases/ as well as other exceptional cases)

NFAC to assign the case selected to a specific assessment unit in any one Regional e-assessment Centre through an automated allocation system.

Assessment Unit may request to NFAC for obtaining such further information, documents or evidence from the assessee or any other person, conduct enquiry or verification by verification unit and seek technical assistance from the technical unit.

Report of Verification Unit and/ or Technical unit will be sent to the Assessment unit

In case of failure to file a reply by assessee to any notice NFAC shall serve upon such assessee a show cause notice u/s. 144 for opportunity on a date and time to be specified in the notice

Draft assessment order by Assessment Unit –

- *after taking into account all the relevant material available on the record make in writing*
- *In case of failure to reply - make in writing, a draft assessment order to the best of its judgment*
- *either accepting the income, or sum payable by, or sum refundable to, the assessee as per his return or modifying the said income or sum*
- *send a copy of such order to NFAC*

Assessment unit shall, while making draft assessment order, provide details of the penalty proceedings to be initiated therein, if any

NFAC shall examine the draft assessment order in accordance with the risk management strategy specified by the Board, whereupon it may decide to

- finalise the assessment as per the draft assessment order and serve a copy of order along with notice initiating penalty and notice of demand (if no variation proposed) or;
- If modification is proposed, then show-cause notice to assessee or
- Assign such draft order to one review unit of REAC for review

If referred to Review Unit –

- It shall conduct review of draft order and
- Either concur with Draft order and intimate the same to NFAC or
- Suggest modification and send the modifications to NFAC

If no suggestions proposed by Review Unit then NFAC shall–

- finalise the assessment as per the draft assessment order and serve a copy of order along with notice initiating penalty and notice of demand or
- If modification is proposed originally, then show-cause notice to assessee

If suggestions received for modifications then NFAC shall assign the case to an assessment unit, other than the assessment unit which has made the draft assessment order, through an automated allocation system

Such assessment unit shall after considering the modifications suggested by the review unit, send the final draft assessment order to NFAC. On receipt of draft order NFAC shall either finalise the order and if modifications proposed, then issue SCN

If SCN issued to assessee then, he/she has to furnish their response to NFAC on or before the date and time specified in the notice

NFAC shall

• If no reply to SCN received, finalise the draft assessment order and issue notice of demand and penalty notice

• If reply received – send the response received to the concerned assessment unit

Assessment unit shall after considering the response, send the revised draft assessment order to NFAC

NFAC shall on receipt of revised draft assessment order, in case no modification prejudicial to the interest of the assessee is proposed – finalise assessment

NFAC shall after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Act

Powers of AO
- Notice u/s 133(6)
-Summons u/s 131

Some Instances of Replies

Query:

As per the provisions of Income Tax Act, 1961, Schedule AL is required to be filled in cases where the assessee is having total income exceeding Rs. 50 Lakhs. On verification of your ITR, it is noticed that, in spite of having total income more than Rs. 50 Lakhs, you have not reported any assets or liabilities in schedule AL of the ITR. You are required to submit the details of your Assets and Liabilities as required to be filled in Schedule AL of the ITR.

Response:

Schedule AL of ITR specifically requires to report about the Assets and Liabilities “other than those included in Part A-BS”. As the assessee has shown all the details of assets and liabilities in the Part A-BS of ITR and hence the Nil reporting under Schedule AL is correct.

AO’s Comment

AR’s Reply

Query:

Kindly provide details of all the transaction with the related parties covered u/s 40A(2)(b) of the Income Tax Act during the year under consideration. Provide justification us to how the transactions are at Arm's length.

Response:

Details of transactions made with related parties as covered u/s 40A(2)(b) are filled herewith. The interest was paid @ 12% to the related parties which was the prevailing market rate of interest.

We have enclosed bills in respect of purchases from related parties. We have also enclosed bills of sales made by the related parties to the outsiders for your kind perusal. The said related parties had sold goods to the outsiders and to the assessee at the same rate. From the said bills and details your goodself will appreciate that the assessee's transactions with related parties in respect of purchases are at arm's length price.

Query:

Please submit the details of unsecured loans in prescribed format and prove the identity, genuineness and creditworthiness of such transactions.

Response:

Details such as opening balance, addition made during the year, interest paid, TDS deducted on interest, closing balance of unsecured loans in required format is filed herewith.

We have also enclosed PAN to establish the identity of lenders, Bank Statements and Confirmations to establish the genuineness of the transaction, Acknowledgement of Return of Income and Financial Statements, Bank statement to establish the creditworthiness of the lenders.

Query:
It is noticed that you have made repayment of loan or deposit or any specified advance made during the previous year to the XXXXXX company whose registration has been cancelled by MCA. Please furnish the complete details of the transaction.

Response:
The XXXXXX is a Partnership firm and not a company and hence does not require any registration with MCA and hence there is no question of cancellation of the same by MCA. Copy of PAN card of XXXXXX is filed herewith. The fourth character in PAN is ‘F’, which means it is a Partnership Firm.

Query:

Where adhoc (on estimation basis) addition is proposed to be made by the Assessing Officer while passing assessment order u/s 144 of the I.T. Act, 1961

Response:

Even in a best judgment assessment, the assessing officer should really base the assessment on his best judgement and he must not act dishonestly or vindictively or capriciously without looking at the nature of business and reasonable profit out of such business.

Reliance is placed on the case of **Brij Bhushan Lal Parduman Kumar Vs. Commissioner Of Income Tax (1978) 115 ITR 0524** dated **06.10.1978** wherein it was held that "The authority making a best judgment assessment must make an honest and fair estimate of the income of the assessee and though arbitrariness cannot be avoided in such estimate the same must not be capricious but should have a reasonable nexus to the available material and the circumstances of the case."

Query:
Only agricultural income as only source of income

Response:

1. It is further submitted that the assessee is exclusively engaged in the agriculture activity only and is not having any other primary source of income or any other business activity All the revenue records and copies of 7/12 as well as other evidences like bills from parties are clearly evidencing the full-fledged agriculture activity of the assessee and in absence of any other evidences of income being earned by the assessee from any other activity other than agriculture activity, the agriculture income as declared by the assessee should be accepted as such.

2. The assessee relies on the opinion of the Hon'ble Gujarat High Court in the case of ITO Vs. Ashwin D. Mehta (HUF) [Tax Appeal No. 386 & 391 of 2000], wherein the Hon'ble Court opined that ...."since the agricultural income has been accepted by the revenue in earlier years and the AO has not been able to prove any other source of income out of which the assessee could have earned this income and the income declared by the assessee has to be accepted".

Subsequent Notice for Penalty u/s 272A(1)(d)

- Whether adjournment taken ?
- Whether subsequent compliances made?
- Whether order passed u/s 143(3)
- Multiple penalties for multiple notices ?

- 273B – Reasonable cause

Query:
Where penalty proceedings are initiated u/s 272A(1)(d) when the order is passed u/s 143(3)

Response:
When the Assessment Order is passed u/s 143(3) and not u/s 144 no penalty u/s 272A(1)(d) shall be levied.

This issue is squarely covered by the decision of the Delhi Bench, ITAT in the case of Akhil Bhartiya Prathmik Samshak Sangh Bhawan Trust vs. ADIT [5 DTR 0429] wherein it was held that “Assessment having been made under s. 143(3) and not under s. 144, it means that subsequent compliance in the assessment proceedings was considered as good compliance and the defaults committed earlier were ignored by the AO hence penalty could not be levied.”

Procedure for 148

How to proceed in case- Notice u/s 148 of the Income Tax Act is received by your client.

First step is to File ITR online u/s 148 for the respective assessment year. In e-proceedings there is option to file ITR u/s 148.

Second step is MUST- Ask from the AO, the copy of the reasons recorded by the AO before issue of notice along with copy of necessary sanctions taken by the AO from the approving authority plus copy of any relevant tangible material which has been considered by the AO for the reasons to be recorded. Delhi High Court in case of Sabh Infrastructure ltd. Vs. ACIT dated 25.09.2017

The Third step is MUST- to file the objection against the re-opening of assessment strongly before the AO and ask to drop the proceedings , if you think the re-assessment proceedings are invalid.

Fourth Step-WAIT for the speaking order of the AO disposing off the objections filed by you, If the AO drops the proceedings then the case is closed.

Decision of Supreme Court in case of GKN Driveshafts (India) ltd. Vs. ITO(2003) 259 ITR 19

The AO will issue the notice u/s 143(2) and notice u/s142(1)

Then you are requested to file the necessary replies and get the assessment done.

Please note that the above steps will strongly help your case in case you would prefer an appeal against the re-assessment order.

Case Research

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HOW ITAT ORDERS WORKS

<u>Notice u/s 148 issued in the name of dead person is invalid in the eyes of law.</u>

Sh. Haresh P. Shah, Legal Heir, Late Manjula P. Shah Vs ITO [ITA No.894/ AHD/2016]

Facts of the case

Notice for reassessment proceedings u/s 147/148 was issued to dead person by the department. Death certificate was furnished by the legal heir of the assesse.

Assesse's Contention

The Ld. AR of the legal heir of assesse contented that despite pointing out by her legal heirs that assesse had expired long back, the assessing officer continued reassessment proceedings against her, which is not valid, therefore reassessment proceedings initiated against her by the assessing officer under section 147/148 of the Act should be quashed.

Crux of the case

Notice u/s 148 was issued in the name of dead person which is invalid in the eyes of law.

Reliance placed on

Rasid Lala vs. ITO, [2017] 77 taxmann.com 39 (HC- Gujarat)

Rupa Shyamsundar Dhumatkar vs. ACIT & Ors., in Writ Petition No. 404 of 2019 (HC- Bombay)

ITAT ruled in favor of assesse.

Download and read full judgment at https://www.itatorders.in/appeal/ita-894-ahd-2016-14-shri-haresh-p-shah-l-h-of-late-manjula-p-shah-valsad-the-income-tax-officer-ward-2-valsad

Case Studies where additions proposed in Draft assessment

Case Study-1

AO's Comments:

Where Assessing Officer denies the existence of an agreement based allotment letter from developer to the buyer.

AR’s Submission:

When the Assessing Officer has no doubt that assessee has made booking of property, the contention of the assessee is that said booking with builder must be construed as agreement for purpose of Section 56(2)(x).

The word “agreement” is not defined under the Income tax Law for the purpose of Section 56(2)(x) however when the AO has accepted that the amount paid is earnest money or booking amount , it is natural that the same is always in pursuance to an agreement. The fact remains that while paying the booking amount, the assessee as well as the builder has entered into an agreement. The moot question which needs to be answered is **“Can the builder sell the same property at higher value for which assessee has paid booking amount in pursuance to allotment letter to any other buyer even if buyer complies to the conditions in the allotment letter” If the answer is No, then it is clear that it is only the agreement, which stops the builder to do so.**

Assessing Officer’s order: **This was accepted in assessment order and the addition was dropped.**

Case Study - 2

Where The Assessing Officer proposed to bring the entire amount to tax of co-owner(s) in the hands of assessee on a protective basis being no information regarding the co-owner(s) of the assessee for the year under consideration.

AO's Comments:

"In era of "Faceless Income Tax Assessment" as recently introduced by the government, with wide jurisdiction spread all over the country, the information whether the case of the joint stake holders are also taken up for scrutiny is unascertainable. In the given scenario and in the interest of revenue, it is considered opt to bring the entire amount to tax in the hands of assessee on a protective basis."

AR's Submission:

"Protective addition is done when it is not ascertainable who is really liable to pay tax among a few possible persons i.e. when the AO is not able to determine when income is to be assessed in A or B? It is a kind of assessment whereby the assessing officer, not knowing the true ownership of the asset, the income of which he wants to tax, deems the incomes of all the persons who are actually claiming to have their rights over there".

Assessing Officer's order: **This was accepted in assessment order and the addition was dropped.**

Case Study- 3

AO's Comments: There were huge cash withdrawals of Rs.xxxxx from FINCO and ICICI Bank and cash deposit of 79 Cr in said bank

AR's Submission:

It is submitted that the apart from the business of textiles in the name of XYZ for which audit report and other details were furnished, assessee was having business of cheque discounting through ICICI and FINCO Bank.

The proof in the form of Gumasta license under Shop and Establishment Act from local authority Municipal Corporation for purpose of cheque discounting business is filed herewith. Its mentions the registration number as xxxxxx and mentions nature of business at Point 3 as "Business of Cheque discounting". However, it is humbly submitted that the net commission income from business of cheque discounting arising out of transaction in bank accounts of ICICI Bank and FINCO Bank amounting to Rs.xxxxxx was inadvertently failed to be offered in return of income.

The assessee has **re-casted his books of accounts** on basis of impugned bank statement. The bank book of bank are filed herewith. The total credits in both the above mentioned bank accounts comes to Rs.xxxx/- (which also includes some entries pertaining to cheque bounced/reversal and some inter-bank transfers) and on basis of balance sheet and profit and loss account, the profit comes to Rs.xxxx/- which the assessee is ready to offer and shall pay tax within 30 days of passing of assessment order .The commission in the business of cheque discounting ranges from 0.05-0.25% of transaction value. The total credits in bank representing cheque discounting receipts comes to Rs.xxxxx and the commission on it comes to Rs.xxxx/-,and thus the rate of commission comes to 0.23% which is more than reasonable in this line of business.

Reference is invited to the decision of **Sanjay R. Shah vs. ITO in [2017] 88 taxmann.com 809 (Ahmedabad - Trib.)** wherein the facts were similar as appellant in this case was also engaged in cheque discounting business and AO observed that the assessee has earned commission income @ 0.1% on the total turnover in the assessment proceedings and Honourable Tribunal on the issue of actual turnover has directed the Assessing Officer to reconsider the turnover claimed by the appellant and further confirmed the view that the commission income @0.1% is reasonable and apt.

It is well settled law that any undisclosed income would be represented by any undisclosed asset and as on 31.03.2018 assessee had the following undisclosed asset which acts as a sufficient proof regarding undisclosed income. The major cheque discounting transactions were done through FINCO bank which was closed before the end of the year and ICICI bank was majorly used as there were withdrawal limits of different bank and so the assessee used to transfer funds from FINCO bank to ICICI bank whenever needed and withdraw cash from ICICI bank to be given to the customer.

SR No.	Assets as on 31.03.2018	Amount
1.	Loans and Advances -XXXX	Rs. 16,50,000/-
2.	Cash on Hand -Cash	Rs. 37,079/-
3.	Cash at Bank -ICICI Bank -xxxx	Rs. 26,449.25/-
Total Assets		Rs. 17,13,528.25/-

Thanks!
Any Questions ?

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