

MISCELLANEOUS PROVISIONS

Some Key Points : Recent Amendments

Service of notice

The Finance (No.2) Act, 2009 has substituted to section 282 whereby a notice or requisition under the Act may be served on the person named therein by post or as if it were a summons issued by a court. W.e.f. 01.10.2010, such notice can be served by electronic mail also. 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. The following table shows the list of persons on whom notice should be served.

	Assessee	Addressee
(i)	An existing firm	Any member of the firm
(ii)	An existing HUF	The manager or any adult member of the family
(iii)	A company	The Principal Officer thereof
(iv)	Local authority	The Principal Officer thereof
(v)	An existing AOP or BOI	The Principal Officer or any member thereof.
(vi)	An individual	The individual himself
(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 HUF	The last manager of the family; if he is dead, all adults who were members immediately before the partition.
(x)	A dissolved AOP	Any person who was a member immediately before dissolution
(xi)	A discontinued business	The assessee; In the case of a firm or an AOP, any person who was a member at the time of discontinuance. In the case of a company, its Principal Officer.

Document Identification Number [Section 282B]

The Finance Act, 2010 has inserted section 282B w.e.f. 01.10.2010. The salient features are given below –

- (a) Every Income-tax authority shall allot a computer generated Document Identification Number in respect of every notice, order, letter or any correspondence issued by him to any other income-tax authority or assessee or any other person and such number shall be quoted thereon.
- (b) Where the notice, letter or correspondence does not bear Document Identification Number referred in (a) above, such notice, order, letter or any correspondence shall be treated as invalid and shall be deemed never to have been issued.
- (c) Every document, letter or correspondence on or after 01.07.2011 by an Income-tax authority or on behalf of such authority, shall be accepted only after allotting and quoting of a computer generated Document Identification Number.
- (d) Where the document, letter or correspondence received by any Income-tax authority or on behalf of such authority, does not bear the Document Identification Number referred in (c) above, such document, letter or any correspondence shall be treated as invalid and shall be deemed never to have been received.

Question 1

An order for A.Y. 2009-10 was passed by the Assessing Officer as per section 143(3), but the typist wrongly typed in the order, the assessment year as 2008-09 and the relevant previous year as ending on 31.3.2008. Assessee claimed in appeal that the same is an invalid order which was not accepted by the CIT(Appeals) on the ground of error of clerical nature. What do you say about 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 shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment or notice 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 2

“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 company, a dissolved firm, a deceased person and a partitioned HUF.*

Answer

- (i) The service of notice or summon 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 -
- (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 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:-

Person	Notice be addressed and served on
A company	Principal officer of the company
A dissolved firm	Any person (not being a minor) who was a partner immediately before dissolution.
A deceased person	The legal heirs of the deceased.
A partitioned HUF	Last Manager of the HUF, or, if he is dead, then, all adult members of the erstwhile HUF.

Question 3

State briefly the provisions relating to furnishing of annual information return under the Income-tax Act, 1961. What are the consequences of not furnishing the annual information return?

Answer

Section 285BA provides that the following persons who are responsible for registering or maintaining books of account or other document containing a record of any specified financial transaction, under any law for the time being in force, shall furnish an annual information return in respect of such specified financial transaction registered or recorded by him during any financial year beginning on or after 01.04.2004.

Direct Tax Laws

The following persons are covered –

- (a) an assessee; or
- (b) the prescribed person in the case of an office of Government; or
- (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 as referred to in the Indian Post Office Act, 1898; or
- (g) the Collector referred to in the Land Acquisition Act, 1894; or
- (h) the recognized stock exchange
- (i) an officer of the Reserve Bank of India, constituted under the Reserve Bank of India Act, 1934; or
- (j) a depository referred to in the Depositories Act, 1996

Such annual information return should be furnished to the prescribed income-tax authority or such other authority or agency as may be prescribed in respect of –

- (i) such transactions registered or recorded by him during any financial year beginning on or after 1st April, 2004, and
- (ii) information relating to which is relevant and required for the purposes of this Act

The annual information return has to be furnished within the prescribed time after the end of such financial year in such form and manner (including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any computer readable media) as may be prescribed.

“Specified financial transaction” as per section 285BA(3) covers the following transactions –

- (i) transaction of purchase, sale or exchange of goods or property or right or interest in a property, or
- (ii) transaction for rendering any service, or
- (iii) transaction under a works contract, or
- (iv) transaction by way of an investment made or an expenditure incurred, or
- (v) transaction for taking or accepting any loan or deposit

The CBDT may prescribe different values for different transactions in respect of different persons, having regard to the nature of such transactions. The value or the aggregate value of such transactions during a financial year so prescribed referred to above should not be less than fifty thousand rupees.

Section 271FA provides a penalty for not furnishing a return as required under section 285BA(1). Penalty of Rs.100 is attracted for every day during which failure continues, if a

person who is required to furnish an annual information return fails to furnish such return within the time prescribed.

Question 4

"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?

Answer

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 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, 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.

Question 5

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.

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 attachment 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 Chief Commissioner, Commissioner, Director General 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 Chief Commissioner, Commissioner or Director General 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.

Question 6

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 of the Act.

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 of the Act. It has been so held by the Apex Court in the case of *Stock Exchange Ahmedabad vs. ACIT 248 ITR 209*.