

Assessment Procedure

Some Key Points : Recent amendments

Extension of due date for filing of transfer pricing report and return of income under section 139(1) of corporate assessee undertaking international transactions

The due date for filing of a transfer pricing report under the provisions of section 92E in Form 3CEB and filing of return of income of corporate assessee who have undertaken international transactions during the relevant previous year has been extended from 30th September to 30th November of the assessment year, on account of the practical difficulties in accessing contemporary comparable data before 30th September.

The extension of due date for filing of return would, however, not be applicable to non-corporate assessee who have undertaken international transactions during the relevant previous year.

Specified class or classes of persons to be exempted from filing return of income [Section 139(1C)]

Under section 139(1), every person has to furnish a return of his income on or before the due date, if his total income exceeds the basic exemption limit. For reducing the compliance burden of small taxpayers, sub-section (1C) has been inserted in section 139 to empower the Central Government to notify the class or classes of persons who will be exempted from the requirement of filing of return of income, subject to satisfying the prescribed conditions.

Alternate dispute resolution mechanism [Section 144C]

The Finance (No.2) Act, 2009 has introduced reference to Dispute Resolution Panel by eligible assessee. Following are the salient features of the section.

- (1) The Assessing Officer shall forward a draft of the proposed order of assessment to eligible assessee if he proposes to make any variation in the income or loss returned, which is prejudicial to the interest of the assessee. It is applicable in respect of any draft order made on or after 01.10.2009.
- (2) On receipt of the draft order, the assessee shall within 30 days file his acceptance of the variations to the Assessing Officer or file his objections to such variation with (i) the Dispute Resolution Panel; and (ii) the Assessing Officer.
- (3) The Assessing Officer shall complete the assessment on the basis of the draft order if the assessee intimates the acceptance of the variation or no objection was received within the period of 30 days from the date of receipt of draft order by the assessee.
- (4) The Assessing Officer shall pass an order within one month from the end of the month

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in which the acceptance of the assessee is received for variation or the period for filing objection mentioned herein before has expired.

- (5) Where the assessee has objected to the variation proposed in the draft order by the Assessing Officer, the Dispute Resolution Panel shall issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.
- (6) The Dispute Resolution Panel shall issue the direction referred to above after considering the following namely – (a) draft order; (b) objections filed by the assessee; (c) evidence furnished by the assessee; (d) report if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority; (e) records relating to the draft order; (f) evidence collected by or caused to be collected by it ; and (g) result of any enquiry made by, or caused to be made by, it.
- (7) The Dispute Resolution Panel before issuing any direction shall make such further enquiry, as it may think fit or cause any further enquiry to be made by any income-tax authority and report the result of the same to it.
- (8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order and it shall not set aside any proposed variation or issue any direction to the Assessing Officer for further enquiry and passing of the assessment order.
- (9) If the members of the Dispute Resolution Panel defer in opinion on any point, the point shall be decided accordingly to the opinion of the majority of the members.
- (10) Every direction issued by the Dispute Resolution Panel shall be binding on the assessing officer.
- (11) If any direction is prejudicial to the interest of the assessee or interest of the revenue, then, the same can be issued only after an opportunity of being heard is given to the assessee or the Assessing Officer, as the case may be.
- (12) Such direction has to be issued within 9 months from the end of the month in which the draft order is forwarded to the eligible assessee.
- (13) Upon receipt of such direction, the Assessing Officer has to complete the assessment in accordance with the same, within one month from the end of the month in which the direction is received. There is no requirement of providing any further opportunity of being heard to the assessee.
- (14) The CBDT is empowered to make rules for the efficient functioning of the Dispute Resolution Panel and speedy resolution of the objections filed by the eligible assessee.
- (15) 'Eligible assessee' means (i) any person in whose case such variation arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and (ii) any foreign company.

Question 1

Is it valid in law to rectify an assessment order under section 154 due to subsequent change of law on retrospective basis? Also state, whether a Supreme Court judgement would warrant a rectification under section 154 in respect of an order passed earlier by the Assessing Officer.

Answer

The Calcutta High Court, in *CIT v. E.Sefton and Co. (P.) Ltd. (1989) 179 ITR 435*, observed that if the assessment order is plainly and obviously inconsistent with the specific and clear provision as amended retrospectively, undisputably there is a mistake apparent from record. In the light of the retrospective amendment, the assessment order had to be revised.

In view of this, it can be said that the Assessing Officer can, under section 154 of the Income-tax Act, 1961, rectify the order of assessment in the light of the later amendment of the law with retrospective effect.

The Gujarat High Court, in *CIT v. Subodhchandra S. Patel (2004) 265 ITR 445*, held that non-consideration of a judgment of the jurisdictional High Court or the Apex Court would always constitute a mistake apparent from the record, regardless of the judgment being rendered prior to or subsequent to the order proposed to be rectified.

Note – The Calcutta High Court, however, expressed a different view in *Geo Miller and Co. v. DCIT [2003] 262 ITR 0237* holding that a subsequent exposition of law by Supreme Court does not render assessment order as made on mistake.

Question 2

State whether the following assesseees have to file return of income and if so, the due date for the assessment year 2012-13:

- (i) *A public charitable trust registered under the Act is running an educational institution with aggregate annual receipt of ₹ 65,00,000 and total income of ₹ 3,20,000. Is the accounts of the trust liable for audit under section 44AB of the Act?*
- (ii) *A registered trade union having income from let out property of ₹ 1,00,000.*
- (iii) *A public trust hospital having an aggregate annual receipt of ₹ 200 lacs and availing exemption under section 10(23C)(via) with total income of ₹ 1,10,000.*

Answer

- (i) Since the total income of ₹ 3,20,000 exceeds the basic exemption limit of ₹ 1,80,000, the mandatory requirement of filing return under section 139(4C) will apply.

The accounts of the charitable trust running an educational institution with an aggregate annual receipt of less than ₹ 100 lacs is eligible for exemption under section 10(23C)(iiiad) and therefore, the accounts of such trust need not be audited under section 44AB.

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Therefore, the due date of filing of return of income of the public charitable trust running an educational institution eligible for exemption under section 10(23C)(iiiad) is 31st July 2012.

- (ii) A registered trade union is having income from property, which is exempt under section 10(24).

Section 139(4C) mandates filing of return only when the total income exceeds the maximum amount which is not chargeable to tax without giving effect to the provisions of section 10. Even without giving effect to section 10(24), the total income is below basic exemption limit and therefore, there is no mandatory requirement to file the return of income.

- (iii) Since the total income of the public trust hospital, without giving effect to the exemption under section 10(23C)(via), is less than the basic exemption limit of ₹ 1,80,000, the trust need not file its return of income.

Question 3

Dishant received a notice under section 148 from the Assessing Officer for A.Y. 2006-07 on the ground that depreciation on certain assets was allowed in excess. The Assessing Officer recorded the reason for reopening. The original assessment was completed under section 143(3). In course of reassessment proceeding, the Assessing Officer also disallowed certain sum under section 14A in respect of expenses purported to be in relation to dividend from companies and tax-free interest. However, the Assessing Officer did not record the reason for applying the provisions of section 147 in respect of the issue of disallowance under section 14A and passed the order disallowing the excess depreciation and also certain sum under section 14A. Is there any infirmity in the order passed by the Assessing Officer?

Answer

Explanation 3 to section 147 permits the Assessing Officer to assess or reassess the income in respect of any issue (which has escaped assessment) which comes to his notice subsequently in the course of proceedings under section 147, even though the reason for such issue does not form part of the reasons recorded under section 148(2).

Therefore, in the instant case, the Assessing Officer has the power to disallow expenses under section 14A in addition to disallowing excess depreciation for which notice under section 148 was issued even though the reason for issue relating to disallowance under section 14A was not recorded under section 148(2).

Hence, there is no deficiency in the order passed by the Assessing Officer.

Question 4

Who can be a e-return intermediary as notified by CBDT?

Answer

As per CBDT Notification No. 70/2009 dated 22.9.2009, following entities/persons are qualified to be an e-return intermediary -

- (i) a public sector company as defined in section 2(36A) or any other company in which public are substantially interested within the meaning of section 2(18) and any subsidiary of those companies: or
- (ii) a company incorporated in India, including a bank, having a net worth of rupees one crore or more ; or
- (iii) a firm of Chartered Accountants or Company Secretaries or Advocates, if it has been allotted a permanent account number; or
- (iv) Chartered Accountants or Company Secretaries or Advocates or Tax Return Preparers, if they have been allotted a permanent account number; or
- (v) a Drawing or Disbursing Officer (DDO) of a Government Department.

Further, the following conditions should also be fulfilled to be an e-return intermediary:

- (1) The e-intermediary shall have at least class II digital signature certificate from any of the Certifying authorities authorized to issue such certificates by the Controller of Certifying authorities appointed under section 17 of the Information Technology Act, 2002.
- (2) The e-intermediary shall have in place security procedure to the satisfaction of e-Return Administrator to ensure that confidentiality of the assessee's information is properly secured.
- (3) The e-intermediary shall have necessary archival, retrieval and, security policy for the e>Returns which will be filed through him, as decided by e-Return Administrator from time to time.
- (4) The e-intermediary or its Principal Officer must not have been convicted for any professional misconduct, fraud, embezzlement or any criminal offence.

Question 5

In the proceedings initiated under section 153A, the assessment order passed in respect of Mr. Simbu pertaining to a particular assessment year was annulled by the Income-tax Appellate Tribunal in its order passed on 28.1.2012. The same was received on 28.2.2012 by the jurisdictional Commissioner of Income-tax. Does the Department have any power to complete the assessment subsequent to such annulment? If yes, within what time limit?

Answer

As per section 153A(2), if any proceedings initiated under section 153A or any order of assessment or reassessment made under section 153A(1) has been annulled in any appeal or other legal proceeding, the abated assessment or reassessment relating to any assessment year shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. If the order of annulment is set aside, such revival shall cease to have effect [Sub-section (2) of section 153].

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The time limit for completion of such assessment or reassessment shall be one year from the end of the month in which the abated assessment revives or within the period already specified in section 153 or in sub-section (1) of section 153B, whichever is later.

Explanation 1 to section 153 provides for exclusion of certain periods as specified therein in computing the period of limitation for the purposes of section 153. If after exclusion of such time period, the period of limitation available to the Assessing Officer is less than 60 days, such remaining period shall be extended to 60 days and the period of limitation shall be deemed to be extended accordingly.

The period commencing from the date of annulment of a proceeding or order of assessment or reassessment referred to in sub-section (2) of section 153A till the date of the receipt of the order setting aside the order of such annulment by the Commissioner, shall be excluded in computing the period of limitation for the purposes of section 153B.

Question 6

What will be the consequences when Mr. Raghav made payment of ₹ 75,000 in cash to a travel agent for his travel to Saudi Arabia to be undertaken for business purposes by quoting intentionally the wrong PAN? Would your answer be different if such cash payment was made for his travel to Nepal, instead of Saudi Arabia?

Answer

If a person who is required to quote his permanent account number in any document referred to in section 139A(5)(c), quotes a number which is false, and which he either knows or believes to be false or does not believe to be true, the Assessing Officer may direct that such a person shall pay by way of penalty a sum of ₹ 10,000 under section 272B(2).

In the given case, if Mr. Raghav travels to Saudi Arabia and pays his travel agent cash in excess of ₹ 25,000, such a transaction is covered by section 139A(5)(c) and therefore, Mr. Raghav has to quote his PAN. Mr. Raghav has to be given an opportunity of being heard in the matter. If Mr. Raghav is not able to prove that there was a reasonable cause for the said failure, penalty under section 272B(2) would be imposable.

Travel to a foreign country does not include, for the purpose of section 139(5)(c), travel to neighboring countries. Therefore, in case Mr. Raghav travels to Nepal instead of Saudi Arabia, payment to the travel agent in excess of ₹ 25,000 would not be covered under section 139(5)(c), and therefore, penalty under section 272B(2) would not be attracted.

Question 7

For facilitating expeditious resolution of disputes relating to international transactions involving transfer pricing and foreign companies, the Income-tax Act, 1961, has provided for "alternate dispute resolution mechanism". In this context, you are required to answer the following:

- (i) *What meanings have been assigned to "dispute resolution panel" and the "eligible assessee" under this mechanism?*

- (ii) When can a grievance for resolution be filed by an assessee?
- (iii) What evidences are being considered by the panel to redress the grievance of the assessee?

Answer

- (i) The term "Dispute Resolution Panel" has been defined to mean a collegium comprising of three Commissioners of Income-tax constituted by the Board for this purpose.

The term "Eligible Assessee" means any person in whose case the variation referred to in section 144C(1) in the income or loss returned arises as a consequence of the order of the Transfer Pricing Officer passed under section 92CA(3) and any foreign company.

- (ii) The Assessing Officer shall forward a draft of the proposed order of assessment to the eligible assessee and on receipt of such order, the eligible assessee shall, within thirty days of the receipt of the draft order, file his acceptance of the variations to the Assessing Officer or file his objections, if any, to such variation, with the Dispute Resolution Panel and the Assessing Officer.
- (iii) The Dispute Resolution Panel shall, in a case where any objections are received, take into consideration:-
 - (a) the draft order
 - (b) the objections filed by the assessee
 - (c) the evidence furnished by the assessee
 - (d) the report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority
 - (e) the records relating to the draft order
 - (f) the evidence collected by, or caused to be collected by it
 - (g) the result of any enquiry made by or caused to be made by it, and issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

Question 8

The assessment of Vasudha Polyesters Pvt. Ltd. for the assessment year 2010-11 was completed under section 143(3). On 12-3-2012, the Assessing Officer reopened the assessment in proper manner. The reason recorded was that certain expenditure which ought to have been disallowed under section 14A was not done and hence there has been escapement of income. During the course of hearing, he wants to touch upon some other aspect also, which is not covered by the reason recorded. The assessee objects to the same, contending that the same is not permissible. Examine the correctness of the assessee's contention.

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Answer

The Assessing Officer may, in course of proceeding under section 147, assess or reassess any other income which has escaped assessment and which comes to his notice subsequently in the course of such proceeding.

Explanation 3 to section 147 clarifies that the Assessing Officer may assess or reassess the income in respect of any issue (which has escaped assessment) which comes to his notice subsequently in the course of proceedings under section 147, even though the reason for such issue does not form part of the reasons recorded under section 148(2).

Therefore, the contention of the assessee is not correct.

Question 9

The Assessing Officer has the power to make an assessment to the best of his judgment, in certain situations. What are they?

Answer

Under section 144, the Assessing Officer, after taking into account all relevant material which he has gathered, is under an obligation to make an assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee in the following cases –

- (1) Where any person fails to make the return under section 139(1) and has not filed a belated return under section 139(4) or a revised return under section 139(5).
- (2) Where any person fails to comply with all the terms of a notice issued under section 142(1) or fails to comply with a direction issued under section 142(2A) for getting the accounts audited.
- (3) Where any person, having made a return, fails to comply with all the terms of a notice issued under section 143(2).

Further, section 145(3) of the Income-tax Act, 1961 permits the Assessing Officer to make an assessment in the manner provided in section 144:

- (i) where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee; or
- (ii) where the method of accounting under section 145(1) has not been regularly followed by the assessee;
- (iii) where the accounting standards notified by the Central Government under section 145(2) have not been regularly followed by the assessee.

Question 10

The assessment of CNK Associates, a partnership firm for the assessment year 2009-10 was made under section 143(3) on 31st July, 2011. The Assessing Officer made two additions to the income of the assessee viz. (a) addition of ₹ 2 lacs under section 40(a)(ia) due to non-

furnishing of evidence of payment of TDS and (ii) addition of ₹ 5 lacs on account of unexplained cash credit. The assessee contested addition on account of unexplained cash credit in appeal to the Commissioner (Appeals). The appeal was decided in January, 2012 against the assessee. The assessee approaches you for your suggestion as to whether it should apply for revision to the Commissioner under section 264 or rectification to the Assessing Officer under section 154 as regards disallowance under section 40(a)(ia). What should be your suggestion?

Answer

The Commissioner cannot exercise his power of revision under section 264 where the order sought to be revised has been made the subject of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal [Section 264(4)], even if the relief claimed in the revision is different from the relief claimed in the appeal. This was the view of the Supreme Court in the case of *Hindustan Aeronautics Limited vs. CIT (2000) 243 ITR 808 (SC)*. It is not open to the assessee to seek recourse to revision under section 264 after the appeal is decided. Therefore, although the matter of addition of ₹ 2 lacs under section 40(a)(ia) was not taken before the Commissioner (Appeals), the assessee, CNK Associates cannot apply for revision under section 264 in respect of the same.

Under section 154(1A), where any matter had been considered and decided in any proceeding by way of appeal or revision, rectification of such matter cannot be done by the Assessing Officer. However, in respect of the matter which has not been considered and decided in the appeal or revision, the order of the Assessing Officer can be rectified under section 154. Thus, the assessee can apply to the Assessing Officer for rectification of the order in respect of addition under section 40(a)(ia), as this matter has not been considered and decided in any proceeding by way of appeal or revision.

In view of above, the assessee, CNK Associates should seek rectification under section 154.

Question 11

Examine critically in the context of provisions of the Act "Can the Assessing Officer issue notice under section 148 to reopen the same assessment order on the same grounds for which the CIT had issued notice under section 263 of the Act"?

Answer

The Assessing Officer cannot issue notice under section 148 to reopen the same assessment order on the same grounds for which the Commissioner had issued notice under section 263 of the Income-tax Act, 1961, since the second proviso to section 147 specifically provides that the Assessing Officer may assess or reassess an income which is chargeable to tax and has escaped assessment, other than the income involving matters which are the subject matter of any appeal, reference or revision. Therefore, if the income relates to a matter which is the subject matter of revision under section 263, then the Assessing Officer cannot issue notice under section 148 to reopen the assessment order.

Question 12

Is the Assessing Officer empowered to assess or reassess an income which is chargeable to tax and has escaped assessment, in a case which is pending before the Appellate Tribunal? Discuss.

Answer

As per second proviso in section 147, the Assessing Officer may assess or reassess an income which is chargeable to tax and which has escaped assessment, other than the income involving matters which are the subject matter of any appeal, reference or revision. Therefore, in respect of income involving the matters which are the subject matter of an appeal, it is not possible for the Assessing Officer to initiate proceeding under section 147.

Question 13

A search was conducted under section 132 in the business premises of Harish on 15th December, 2011. At that time, assessments under section 143(3) for assessment years 2009-10 and 2010-11 and reassessment proceeding under section 147 for assessment year 2008-09 were pending before the Assessing Officer.

- (i) *What are the assessment years for which notice can be issued for making post-search assessment?*
- (ii) *What would be the fate of pending assessments and reassessment?*
- (iii) *What would be the effect, if the post-search assessment orders are annulled by the Income-tax Appellate Tribunal?*

Answer

- (i) The notice under section 153A can be issued for six assessment years preceding the assessment year relevant to the previous year in which the search is conducted. In this case, the search is conducted in the previous year 2011-12, the relevant assessment year for which is A.Y.2012-13. Therefore, notice can be issued for the six preceding assessment years i.e. for assessment years 2006-07 to 2011-12.
- (ii) As per section 153A, the assessment or reassessment relating to any assessment year, falling within the above period of six assessment years, pending on the date of initiation of the search under section 132, shall abate. In other words, they will cease to be applicable. Therefore, the assessments under section 143(3) for assessment years 2009-10 and 2010-11 and the reassessment proceeding under section 147 for assessment year 2008-09 **shall abate**.
- (iii) Section 153A provides that where the post-search assessment order is annulled in any appeal or any other legal proceeding, the abated assessment and reassessment proceedings shall stand revived. Therefore, the assessments under section 143(3) relating to assessment years 2009-10 and 2010-11 and the reassessment proceeding relating to assessment year 2008-09, which abated on initiation of search, **shall stand revived**.

Question 14

Mr. X filed the return of A.Y.2008-09 declaring an income of ₹ 3,25,000. He had been assessed under section 143(3) and the Assessing Officer made the following additions:

- (i) Unexplained cash credit for want of confirmation from creditors ₹ 2,00,000.
- (ii) Disallowance in respect of travelling expenditure of ₹ 46,000 for tour to Chennai for effecting sales there, as Mr. X failed to establish that the expenditure had been incurred for the purpose of business.

At a later stage, he has been served with a notice under section 148 for income escaping assessment in respect of A.Y. 2008-09. During the course of reassessment proceeding, the Assessing Officer sought to add unaccounted sales of ₹ 4,00,000 made at Chennai.

During the course of hearing, the assessee produced confirmation from creditors and requested to delete the addition for unexplained cash credit of ₹ 2,00,000 and to allow deduction of travelling expenditure of ₹ 46,000. Discuss the validity of the contention raised by the assessee.

Answer

Where reassessment is made under section 147 in respect of income which had escaped tax, the Assessing Officer's jurisdiction is confined only to such income which has escaped tax and does not extend to reopening or reconsidering the whole assessment or permitting the assessee to reargue questions which had been decided in original assessment proceedings, unless relatable to an item sought to be taxed as "escaped income"[*CIT v. Sun Engineering Works (P) Ltd.* [1992] 198 ITR 297(SC)].

Therefore, considering the Supreme Court decision in the above case, the assessee cannot seek a review of a concluded item, i.e., unexplained cash credit, which is unconnected with escaped income. However, request for allowing traveling expenditure can be considered because it is relatable to income which is sought to be assessed as escaped income i.e., unaccounted sales effected in Chennai.

Question 15

Does the Assessing Officer have power to make any adjustment to income disclosed by the assessee in the return of income in course of processing the return under section 143(1)?

Answer

The procedure to be followed for summary assessment is contained in section 143(1). As per section 143(1), the total income or loss of an assessee shall be computed after making the following adjustments to the returned income:

- (i) any arithmetical error in the return; or
- (ii) an incorrect claim, if such incorrect claim is apparent from any information in the return.

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For the purpose of section 143(1), "an incorrect claim apparent from any information in the return" means such claim on the basis of an entry, in the return of income:

- (i) if an item, which is inconsistent with another entry of the same or some other item in such return;
- (ii) in respect of which, the information required to be furnished under the Income-tax Act to substantiate such entry, has not been so furnished;
- (iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may be expressed as monetary amount or percentage or ratio or fraction.

Thus, the Assessing Officer, in course of processing the return of income under section 143(1), has the power to make the above adjustments to the income disclosed by the assessee in the return.

Question 16

Can the Assessing Officer complete the assessment of income from international transactions in disregard of the order passed by the Transfer Pricing Officer by accepting the contention of the assessee?

Answer

Section 92CA(4) provides that the order of the Transfer Pricing Officer determining the arm's length price of an international transaction is binding on the Assessing Officer and the Assessing Officer shall proceed to compute the total income in conformity with the arm's length price determined by the Transfer Pricing Officer.

Therefore, the Assessing Officer cannot complete the assessment of income from international transactions in disregard of the order of Transfer Pricing Officer and on the basis of contention raised by the assessee.

Question 17

The assessee had failed to deposit the amount of tax under section 140A amounting to ₹ 10,000 but filed his return of income in time. The Assessing Officer, besides charging of interest as per section 234B and section 234C, also issued show cause notice to levy a penalty of ₹ 2,000. The assessee claimed that there is no provision in the Act to impose penalty for non-payment of tax under section 140A.

Answer

The failure on the part of the assessee to pay the whole or any part of the self-assessment tax under section 140A of the Income-tax Act, 1961 makes him an assessee-in-default within the meaning of section 140A(3). The Assessing Officer can levy a penalty on the assessee-in-default by virtue of provisions of section 221(1) of the Income-tax Act and the maximum penalty which can be levied upon the assessee is to the extent of amount of tax remaining unpaid. Therefore, the issue of show cause notice levying a penalty of ₹ 2,000 on the assessee, for non-payment of self-assessment tax of ₹ 10,000 under section 140A, is in order.

Question 18

Tai Ltd. filed its return of income for assessment year 2011-12 on 6th June, 2011. The return is selected for regular assessment under section 143(3) for which notice under section 143(2) is served on the company on 3rd October, 2012. The company responded to the notice under section 143(2). State whether the service of the notice is within time and if not, whether the assessment order can be challenged by the assessee.

Answer

The time limit for service of notice under section 143(2) is six months from the end of the financial year in which the return of income was furnished by the assessee. The return of income for assessment year 2011-12 was filed by the assessee on 6th June, 2011. Therefore, the notice under section 143(2) has to be served by 30th September, 2012. However, the notice was served on the assessee only on 3rd October, 2012. Hence the notice issued under section 143(2) is time-barred.

However, as per section 292BB, where an assessee had appeared in any proceedings or co-operated in any enquiry relating to an assessment or reassessment, it shall be deemed that any notice required to be served upon him, has been duly served upon him in time in accordance with the provisions of the Act and such assessee shall be precluded from raising any objection in any proceeding or enquiry 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. However, the above provision shall not be applicable where the assessee has raised such objection before the completion of such assessment or reassessment. Therefore, in the instant case if the assessee, Tai Limited, had raised an objection to the proceeding, on the ground of non-service of the notice under section 143(2) upon it on time, then the validity of the assessment order can be challenged. In absence of such objection, the assessment order cannot be challenged.

Question 19

The assessment was made under section 143(1) for assessment year 2008-09. The assessee has received a notice under section 148 on 6th April, 2011 for reopening of assessment. Can the assessee challenge the legality of the notice on the ground of change of opinion?

Answer

Under the scheme of section 143(1), only the adjustments relating to any arithmetical error in the return and incorrect claim which is apparent from any information in the return are permitted. In short, what is permissible is only correction of errors apparent on the basis of the return filed. Thus, while making the adjustments under section 143(1), the Assessing Officer has no power to go beyond the information given in the return and make any allowance or disallowance. Therefore, the intimation given under section 143(1) cannot be treated as an order of assessment. Hence, there being no assessment under section 143(1), the question of change of opinion does not arise.

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Therefore, the assessee cannot challenge the legality of the notice issued under section 148 reopening the assessment on the ground of change of opinion in a case where no assessment is made under section 143(3), but only an intimation is issued under section 143(1). This inference is supported by the Supreme Court ruling in *ACIT vs. Rajesh Jhaveri Stock Brokers P. Ltd.* (2007) 291 ITR 500.

Question 20

Discuss the correctness or otherwise of the following proposition in the context of the Income-tax Act, 1961:

A fresh claim before the Assessing Officer can be made only by filing a revised return and not otherwise.

Answer

This proposition is correct. A return of income filed within the due date may be revised by filing a revised return under section 139(5) where the assessee finds any omission or wrong statement in the original return subject to satisfying other conditions. There is no provision in the Income-tax Act, 1961, to make changes or modification in the return of income by filing a letter. In a case where a return of income has been filed within the due date, the only option available to the assessee to make an amendment to such return is by way of filing a revised return under section 139(5). Therefore, a fresh claim can be made before the Assessing Officer only by filing a revised return and not otherwise. The Supreme Court in *Goetze (India) Ltd. vs. CIT* (2006) 284 ITR 323 has held that there was no provision in the Income-tax Act, 1961 to allow an amendment in the return of income filed except by way of filing a revised return.

Question 21

The Assessing Officer within the powers vested in him under section 142(2A), while examining the accounts of PNF Ltd., had ordered to get the same audited. The company challenges this order on the ground "that the opportunity was not provided to them by the Assessing Officer prior to passing of such an order". Decide the correctness of the action of the Assessing Officer.

Answer

As per proviso to section 142(2A) the Assessing Officer shall not direct the assessee to get the accounts so audited unless the assessee has been given a reasonable opportunity of being heard.

Therefore, in this case, the order of the Assessing Officer is not valid since the assessee was not given an opportunity of being heard prior to passing of such order.

Question 22

Smt. Kanti engaged in the business of growing, curing, roasting and grounding of coffee after mixing chicory had a total income of ₹ 4,80,000 from this business which was her only source of

income during the year ended on 31.3.2012. She consults you to have an opinion whether she is required to file return of income for the A.Y. 2012-13 as per provisions of section 139(1).

Answer

The clarification regarding filing of return of income by the coffee growers being individuals covered by Rule 7B of the Income tax Rules, 1962 is given in *Circular No.10/2006 dated 16.10.06*. According to Rule 7B, an individual deriving income from growing, curing, roasting and grounding of coffee with or without mixing chicory, would not be required to file the return of income if the aggregate of 40% of his or her income from growing, curing, roasting and grounding of coffee with or without mixing chicory and income under all other sources liable to tax in accordance with the provisions of this Act, is equal to or less than the basic exemption limit prescribed in the First Schedule of the Finance Act of the relevant year.

In this case, Smt. Kanti has a total income of ₹ 4,80,000 from this business, which was her only source of income for P.Y.2011-12. 40% of her total income works out to ₹ 1,92,000, which is more than the basic exemption limit of ₹ 1,90,000 in respect of resident women assessee. Therefore, Smt. Kanti is required to file a return of income for the A.Y.2012-13 as per the provisions of section 139(1).

Question 23

Ram, an individual, filed his return of income for the assessment year 2011-12 on 15.6.2011. He later discovered that he had not claimed deduction under section 80-C in the said return. He claimed the said deduction through a letter addressed to the Assessing Officer. The Assessing Officer completed the assessment without allowing the deduction claimed by Ram. Is the Assessing Officer justified in doing so?

Answer

The Supreme Court has, in *Goetze (India) Ltd. v. CIT (2006) 284 ITR 323*, ruled that the assessing authority has no power to entertain a claim for deduction made after filing of the return of income otherwise than by way of a revised return. In the instant case, Ram has claimed the deduction under section 80C, which he omitted to claim in the original return of income, through a letter addressed to the Assessing Officer and not by filing a revised return under section 139(5). In view of the decision of the Supreme Court cited above, the Assessing Officer was justified in completing the assessment without allowing the deduction under section 80C.

Question 24

X, an individual, has got his books of account for the year ending 31.3.2012 audited under section 44AB. His total income for the assessment year 2012-13 is ₹ 1,90,000. He desires to know if he can furnish his return of income for the assessment year 2012-13 through a Tax Return Preparer.

Answer

Section 139B provides for submission of return of income through Tax Return Preparers. It empowers the Central Board of Direct Taxes (CBDT) to frame a scheme for the purpose of

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enabling any specified class or classes of persons to prepare and furnish their returns of income through Tax Return Preparers. Specified class or classes of persons have been defined to mean any person, other than a company or a person whose accounts are required to be audited under section 44AB or under any other existing law, who is required to furnish a return of income under the Act. Thus, companies and persons whose accounts are liable for tax audit under section 44AB do not fall within the definition of 'specified class or classes of persons' and consequently, cannot furnish their returns of income through Tax Return Preparers. In the instant case, the books of account of X for the year ending 31.3.2012 have been audited under section 44AB. As such, he cannot furnish his return of income for the assessment year 2012-13 through a Tax Return Preparer.

Question 25

T, an individual, filed his return of income for the assessment year 2012-13 on 15.6.2012 declaring a total income of ₹ 1,20,000. He later discovered that he had not claimed a particular deduction amounting to ₹ 2,10,000 while computing his business income in the said return. He filed a revised return on 03.01.2013 declaring a total loss of ₹ 90,000. The Assessing Officer proposes to disallow the claim of T for carry forward of the business loss amounting to ₹ 90,000 for the reason that the revised return declaring loss for the first time was filed beyond the time prescribed under section 139(3). Examine the validity of the proposed action of the Assessing Officer.

Answer

T has filed his original return of income for the assessment year 2012-13 within the due date specified in section 139(1). Section 139(5) empowers an assessee, who discovers any omission or wrong statement in the return filed by him under section 139(1), to file a revised return before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. T, having discovered an omission to claim a particular deduction in the return filed by him under section 139(1), has filed a revised return within the time prescribed under section 139(5). A revised return has the effect of replacing the original return and relates back to the date of the original return. Thus, where a return was filed under section 139(1) declaring income and later it was revised declaring a loss, the loss shall be allowed to be carried forward as the revised return shall substitute the original return which was filed within time. There is no bar on filing a revised return showing loss for the first time. Therefore, the proposed action of the Assessing Officer to deny the benefit of carry forward of business loss to T is not valid in law. [*CIT v. Periyar District Co-operative Milk Producers Union Ltd (2004) 266 ITR 705 (Mad)*].

Question 26

State whether the following persons have to mandatorily furnish their return of income for the assessment year 2012-13.

- (i) Mr. Ashok, an individual, aged 50 years, whose gross total income before deduction under section 80C is ₹ 2,60,000 and total income after deduction under section 80C is ₹ 1,05,000.
- (ii) M/s. XYZ, a firm, which has incurred a loss.

Answer

- (i) The fourth proviso to section 139(1) requires every person, whose total income without giving effect to the provisions of, *inter alia*, Chapter VIA exceeds the maximum amount not chargeable to tax, to compulsorily furnish the return of income for the relevant assessment year on or before the due date. The gross total income of Mr. Ashok before deduction under section 80C exceeds the basic exemption limit of ₹ 1,60,000 and therefore, Mr. A has to furnish his return of income for the assessment year 2012-13.
- (ii) It is compulsory for firms to furnish their returns of income and loss on or before the due date. Therefore, M/s XYZ has to furnish its return of loss for the assessment year 2012-13 on or before the due date.

Question 27

EIH Private Ltd's assessment for assessment year 2006-07 was completed under Section 143(3) on 31st August, 2007. The company went in appeal to the Commissioner (Appeals) and the appeal was decided on 16th August, 2008 and the appeal effect was duly given by the Assessing Officer on 25th August, 2008. Thereafter, on 1st September, 2012 the Assessing Officer noticed a mistake in calculation of depreciation on a particular block of assets, which reduced the income excessively by ₹ 1.10 lacs. The Assessing Officer issued notice under section 154 for the purpose of rectifying the mistake. Is such rectification permissible?

Answer

Any rectification order under section 154 has to be passed within 4 years from the end of financial year in which the order sought to be amended was passed. Order sought to be amended does not necessarily mean the original order. It could be any order including the amended or rectified order. Where any matter has been considered and decided in any proceeding by way of appeal or revision, the authority passing such order may amend the order in relation to any matter other than the matter which has been so considered and decided.

For subsequent rectification, the time limit of 4 years shall be from the end of the financial year in which the earlier rectification order was passed. [*Hind Wire Industries Ltd vs. CIT (1995) 212 ITR 639 (SC)*]. In the given case, the time limit of 4 years has to be reckoned from the end of the financial year in which the order giving effect to the CIT(Appeal)'s decision was passed. Therefore, the rectification order can be passed by the Assessing Officer at any time before expiry of 4 years from the end of the financial year 2008-09 i.e. on or before 31st March, 2013. In this case, the mistake was noticed by the Assessing Officer on 1st September, 2012, for which he issued notice under section 154 for rectifying the mistake. Such rectification is permissible as the time limit of 4 years expires only on 31st March, 2013.

Question 28

A company submitted the return of income for assessment year 2010-11 on 10th October, 2010. The Assessing Officer served a notice under section 143(2) on the company on 14th August, 2011 in order to make assessment under section 143(3). Thereafter, on 1st September, 2011, the Assessing Officer issued intimation under section 143(1). Such intimation shows a demand for ₹ 10,500 towards tax and interest. The company argues that the issue of intimation under section 143(1) is bad in law. Discuss.

Answer

This issue came up before the Apex Court, in *CIT v. Gujarat Electricity Board* (2003) 260 ITR 84. The Supreme Court held that once regular assessment proceedings have commenced under section 143(2) of the Income-tax Act, 1961, it is a limitation on the jurisdiction of the Assessing Officer to commence proceedings under section 143(1)(a) of the Act. Section 143(1)(a) of the Act enacts a summary procedure for quick collection of tax and quick refunds. Under the scheme, if there is a serious objection to any of the orders made by the Assessing Officer determining the income, it is open to the assessee to ask for rectification under section 154. It is not open to the Revenue to issue intimation under section 143(1)(a) of the Income-tax Act, 1961, after notice for regular assessment is issued under section 143(2). The Legislature intended that where the summary procedure under section 143(1) has been adopted, there should be scope available for the Revenue, either *suo moto* or at the instance of the assessee, to make a regular assessment under section 143(2). However, the converse is not available. A regular assessment proceeding having been commenced under section 143(2), there is no need nor is it possible for a summary proceeding under section 143(1)(a).

Question 29

- (a) *J filed a return of income for the Assessment Year 2000-01, in due time disclosing a total income of ₹4 lacs. The taxes due on the income were covered by taxes deducted at source, advance tax and self-assessment tax.*

The return was taken for scrutiny by the Assessing Officer, who made large additions to the income disclosed by J. On appeal, the High Court set aside the order of assessment and directed a fresh assessment to be made after hearing the parties. The court order had become final since neither party had preferred an appeal against it.

The Assessing Officer did not make any fresh assessment with the result that the assessment became barred by time.

J has filed a petition that since no assessment of his income had been made by the Assessing Officer, the entire taxes paid, including the pre-assessment payments, must be refunded to him.

Is he justified in making this claim? Discuss.

- (b) *An assessment was completed by the Assessing Officer under section 143(3) on the basis of return submitted and other information furnished by the assessee. The*

Assessing Officer accepted the cost of the land after waiting for a reasonable period for report of the valuation officer to whom a reference was made. Subsequent to receiving the report from the valuer, it revealed that there was a variation by about ₹ 3.00 lacs. On the basis of this valuation report, the Commissioner issued notice under section 263 to set aside the completed assessment.

Justify the action of the Commissioner.

- (c) M filed return of income for Assessment Year 2010-11 claiming a refund of ₹ 45,000. The said refund was granted and paid to the assessee on 1st March, 2011 after processing the return under section 143(1). Later on, the case was taken up for regular assessment by issue of notice under section 143(2) and the said assessment was completed on 16th August, 2012 resulting in demand of ₹ 2500. Is the assessee liable to pay interest on the amount of refund already granted to him?

Answer

- (a) The Gujarat High Court held, in *Saurashtra Cement and Chemical Industries Ltd. v. ITO* (1992) 194 ITR 659, that the liability to pay income-tax arose under section 4(1) of the Act and did not depend upon an assessment order being made by the Assessing Officer. It depends upon the enactment of the annual Finance Act laying down the rates of taxation for the relevant assessment year. Thus, as soon as the rates are prescribed, the liability to pay tax crystallizes.

On filing of return under section 139, the provisions of section 140A also get activated, since if any taxes over and above those paid by way of advance tax and tax deducted at source remain, payment has to be made under section 140A before a valid return of income could be filed by an assessee. Payment of pre-assessment taxes does not depend on an assessment being made by the Assessing Officer.

In the present case, J had paid taxes on the basis of his own declaration of income. J's primary liability under section 4 of the Act is not absolved merely due to absence of a formal assessment. As decided by the Supreme Court in *CIT v. Shelly Products* (2003) 261 ITR 367, pre-assessment taxes paid on the basis of admitted income do not become refundable in the absence of an assessment. Hence J's contention is incorrect.

- (b) As per the facts of the case, the Assessing Officer completed the assessment before the valuation report was received. The valuation report was received subsequent to completion of the assessment. However, it may be noted that the said report forms part of the 'record', which the Commissioner may call for and examine under section 263(1). A perusal of the valuation report revealed a variation of ₹ 3 lacs and to that extent it can be said that the order of the Assessing Officer was prejudicial to the interests of Revenue and also erroneous. The Commissioner is absolutely justified in issuing notice under section 263 since the term "record" used in the said section includes all the records available at the time of examination by the Commissioner even though such records may not have been available at the time of regular assessment. This view was upheld by the

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Supreme Court in *CIT v. Shree Manjunathesware Packing & Camphor Works* (1998) 231 ITR 335.

- (c) As per section 234D, where any refund is granted to the assessee after processing the return u/s 143(1) and later on, in the regular assessment there is no refund due or the amount refunded exceeds the amount refundable, the assessee shall be liable to pay simple interest at $\frac{1}{2}\%$ for every month or part of a month from the date of grant of refund to the date of such regular assessment on the whole or the excess amount so refunded.

In this case, the assessee was granted refund after processing the return under section 143(1) and upon regular assessment u/s 143(3) it was found that nothing is refundable and the assessee had to pay ₹ 2,500 towards taxes. The assessee hence has to pay interest @ $\frac{1}{2}\%$ per month or part of a month on the refund granted of ₹ 45,000 from the date of grant of refund to the date of regular assessment.

Question 30

On whom and when does section 139(4C) cast responsibility to file a return of income. What will be the effect of failure to comply with the provisions of this section?

Answer

Section 139(4C) applies to -

- (i) Research Association referred to in section 10(21);
- (ii) News agency referred to in section 10(22B);
- (iii) Association or institution referred to in section 10(23A) or 10(23B);
- (iv) Fund or institution or trust or university or educational institution or any hospital or medical institution referred to in section 10(23C);
- (v) Trade union referred to in section 10(24);
- (vi) *Body or authority or Board or Trust or Commission (by whatever name called) referred to in section 10(46); and*
- (vii) *Infrastructure debt fund referred to in section 10(47).*

These entities shall furnish their return of income if their total income without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to tax.

Failure to comply with the provisions of section 139(4C) will attract penalty under section 272A(2)(e) equal to ₹100 for each day during which the default continues.

Question 31

M/s Shiv Traders, a partnership firm sustained business loss of ₹ 2 lacs, inclusive of admissible depreciation of ₹1.15 lacs under section 32 for the year ended 31.3.2011. The firm did not file its return for that year. The Assessing Officer issued a notice under section 142(1) on 1st March, 2012, in compliance to which the firm filed its return for the said year declaring the loss of ₹ 2 lacs, and sought carry forward for next year. Is the firm's claim justified?

Answer

M/s. Shiv Traders failed to file its return of loss within the time allowed under section 139(3) and the same was filed by it in response to notice under section 142(1). The provisions of section 80 read with section 139(3) clearly specify that the return filed by the assessee in response to notice u/s 142(1) is a belated return and therefore, the benefit of carry forward of business loss shall not be available. However, the assessee shall be entitled to carry forward the unabsorbed depreciation of ₹1.15 lacs as per provisions of section 32(2). The unabsorbed depreciation shall be added to the depreciation allowance of the following previous year and will be deemed to be part of that allowance of that previous year.

Question 32

- (a) *In an order of assessment for the A.Y. 2010-11, the assessee noticed a mistake for which application under section 154 was moved and the order was rectified. Subsequently, the assessee moved further application for rectification u/s 154 which was rejected by the Assessing Officer on the ground that the order once rectified cannot be rectified again. Is the contention of the Assessing Officer correct?*
- (b) *The return for A.Y.2010-11 was filed on time as per section 139(1). The assessee during the course of assessment proceedings under section 143(2), noticed certain omissions and therefore filed a revised return on 18.4.2012. The Assessing Officer ignoring the revised return so filed framed the order on 27.4.2012. Is the action of Assessing Officer correct?*

Answer

- (a) It has been held by the Hon'ble Apex Court in the case of *Hind Wire Industries Ltd. v. CIT (1995) 212 ITR 639* that the order once amended can also be rectified subsequently provided the mistake apparent from record is rectifiable under section 154. The Apex Court enlarged the scope of the words used in that section by stating that it does not necessarily mean the original order. It could be any order including the amended or rectified order. The action of the Assessing Officer is therefore, incorrect.
- (b) The original return was filed in time and the proceedings were already taken up for assessment under section 143(2). The revised return filed by the assessee and it was not given cognizance and the action of the Assessing Officer in making the assessment in disregard of the revised return filed is correct because as per the provisions of section 139(5) the assessee can file the revised return only within a period of one year from the end of the relevant assessment year to which the return relates or before completion of the assessment, whichever is earlier.

In this case, the time limit of one year from the relevant assessment year had already expired and the assessee is not eligible to file a revised return. If at all a revised return is filed, the Assessing Officer may ignore that return and proceed further. Hence, the action of the Assessing Officer is correct.

Question 33

Briefly discuss the concept of accelerated assessment applicable to Association of persons/body of individuals for the assessment year 2012-13.

Answer

Section 174A provides for accelerated assessments in cases of certain Association of Persons (AOP), Body of Individuals (BOI) & Artificial Juridical Persons. If such AOP, BOI etc. is formed or established for a particular event or purpose and the Assessing Officer, apprehends that the AOP/BOI is likely to be dissolved in the same year or in the next year before completion of assessment in the normal course, the Assessing Officer may make an assessment of the income upto the date of dissolution as income of the relevant assessment year even without waiting for the end of the previous year or filing of return by the assessee. This provision is on the same basis as contained in section 174 which deals with accelerated assessment of persons leaving India. The provisions of sub-section (2) to (6) of section 174 shall, so far as may be, apply to any proceedings in the case of any such person (AOP, BOI etc.) as they apply in the case of persons leaving India.

Question 34

Can the Assessing Officer complete the assessment under section 144 of the Income-tax Act, 1961 even though there is no failure on the part of the assessee under section 139(1), 139(4), 139(5), 142(1), 142(2A) or 143(2) of the Act? If so, what are the situations?

Answer

As per section 144, the Assessing Officer is empowered to make an assessment of the total income to the best of his judgment when there are failures on the part of the assessee under sections 139(1), 139(4) and 139(5) or sections 142(1), or 142(2A) or 143(2).

The Assessing Officer can exercise this power legally in other situations contemplated under section 145 and he may make the assessment in the manner provided in section 144. Such power is, however, optional and may be exercised in the following situations:

- (1) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee;
- (2) Where the method of accounting has not been regularly followed by the assessee;
- (3) Where the Accounting Standards notified by the Central Government under section 145(2) of the Act have not been regularly followed by the assessee.

Question 35

What do you understand by the expression Protective Assessment? Illustrate your answer with an example.

Answer

Under the Income-tax Act, 1961, clubbing provisions enable the Assessing Officer to tax the income of a person in another person's hands under certain circumstances. However, the

same income cannot be taxed in the hands of two persons under the law. When the ownership of the income is in dispute or is a matter of doubt, it is open to the Assessing Officer to assess a particular income in the case of the person who is considered as liable to tax and include the same income in the case of another person also as a protective measure. Such an assessment is known as protective assessment.

For example, Mrs. A files her return of income showing a business income of ₹ 2 lacs, and if the Assessing Officer is of the view that the said income belongs to her husband, Mr. A. The Assessing Officer can assess the sum of ₹ 2 lacs in the hands of Mr. A and shall proceed to assess the same amount in the hands of Mrs. A also on a protective basis.

Protective assessment is made to ensure that when the issue is finally settled, the assessment of such income is not barred by time limitation. When the issue is finally settled in appeal or otherwise, only one assessment will stand and the other one will be cancelled automatically.

Question 36

Discuss the correctness of the proposition that 'assessment reopened under section 147 cannot be dropped'.

Answer

The proposition is not correct. Under section 152(2), where the assessment is reopened under section 147, an assessee may claim that the proceedings be dropped for the following reasons -

- (a) He had been assessed on an amount or to a sum not lower than what he would be rightly liable for even if the income alleged to have escaped assessment had been taken into account ; or
- (b) His assessment or computation had been properly made and he has not impugned any part of the original assessment order for that year either under sections 246 to 248 or under section 264.

It may be noted that in a reassessment proceeding, the assessee is not eligible to reopen matters concluded by an order under sections 154 or 155 or 260 or 262 or 263.

Question 37

A return of income was filed within the statutory time provided under the Act, without making the payment of self assessment tax due as per return. The same was paid before completion of assessment. The Assessing Officer wants to declare the return as invalid. Is the Assessing Officer justified?

Answer

Section 140A directs the assessee to pay self assessment tax and interest due and enclose the proof of such payment along with the return. Still if a return is furnished without proof of payment of taxes, it has to be accepted and treated as a return. At the best it can be treated as a defective return.

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Sub-section (3) of section 140A says that the assessee to be treated as an assessee in default for non payment of self assessment tax.

Hence, while the return is to be treated as defective, the application of section 140A(3) may also be pressed into service. A defective return is considered invalid only when the assessee fails to rectify the return within the specified time in spite of the intimation from the Assessing Officer.

Question 38

The assessment of Shah Ltd for the assessment year 2010-11 was completed under section 143(3) on 30.6.2012. There was an audit objection that interest on borrowings ought to have been disallowed partly as there was diversion of borrowed funds to sister concerns without charge of interest. Shah Ltd did not accept the audit objection. On these facts

- (a) *What are the options open to revenue to deal with audit objection?*
- (b) *Can the assessment be re-opened?*

Answer

- (a) One of the options available to Revenue to disallow a part of the interest is by invoking section 263. The Supreme Court in the case of *CIT v. Sree Manjunatheswara Packing Products and Camphor Works* 231 ITR 35 has held that the power of the Commissioner under section 263 is of wide amplitude. Section 263 empowers Commissioner to make or cause to be made such inquiry as he deems fit in order to find out whether any order passed by the Assessing Officer is erroneous in so far as is prejudicial to the interests of Revenue. Once he comes to the conclusion on the basis of material that the order of the Assessing Officer is prejudicial to the interests of Revenue, he is empowered to pass an order to enhance, modify, cancel or set aside the assessment and direct a fresh assessment. On the facts of the present case, the Commissioner can call for the records of the case and decide whether there is any error in not disallowing a part of the interest under section 36(1)(iii). If he is satisfied that such an error has been committed, he can issue a notice to the assessee and pass appropriate orders.
- (b) The assessment cannot be reopened under section 147 on the basis of an audit objection. Audit party cannot express an opinion on the admissibility of an item of expenditure, since this a matter to be decided by the Assessing Officer having regard to the facts of the case. The amended provisions of section 147 empower the Assessing Officer, to reopen an assessment, if he has "reason to believe" that income has escaped assessment. The Delhi High Court has examined the scope of this power and had held that the belief must be own, not based on change of opinion on the same facts (*Garden Silk Mills Pvt Ltd v. DCIT* (1999) 237 ITR 671).

Question 39

On 1.9.2011, Prem & Sons have been searched. During the search, papers belonging to his close friend Mr. Shyam indicating concealed income have been found. How should the Assessing Officer proceed in such a situation under the Act?

Answer

Where the Assessing Officer is satisfied that any undisclosed income belongs to any person other than the person subjected to section 132 search proceedings or whose books or documents or assets were requisitioned under section 132A, then, the relevant books, records or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person. Section 153C provides for assessment of such other person subsequent to such transfer of books, records or assets seized or requisitioned.

Question 40

Examine whether the following actions initiated / taken by the Income-tax Authorities are proper and valid under the provisions of the Act.

- (i) *The Assessing Officer, within his jurisdiction, surveyed the residential house of an assessee who is engaged in money lending business therefrom on 12.7.2011 (Wednesday) at 4.30 p.m.*
- (ii) *The assessment completed under section 143(3) for Assessment Year 2005-06 was found to have been based on wrong information given by the assessee. Accordingly, the income of ₹ 1,32,500 earned on 03.05.2004 had escaped assessment, for which, notice under section 148 to reopen the assessment was issued on 11.3.2012.*

Answer

- (i) The Assessing Officer, under section 133A, is empowered to conduct a survey on the business premises of an assessee within his jurisdiction *on any working day after sunrise but before sunset*. In the present case, the assessee was engaged in money lending business from his residence which shall be construed as business premises and therefore, the action of the Assessing Officer to conduct survey on residential premises on Thursday, which was a working day, at 4.30 p.m. is correct.
- (ii) The assessment under section 143(3) was completed for the assessment year 2005-06 and the notice under section 148 was issued on 11.03.2012. The validity of the notice is discussed hereunder.

An assessment completed under section 143(3) can be reopened under section 148 (where the income escaping assessment is more than ₹ 1 lac) within a period of 6 years from the end of the assessment year in which the income was first assessable. The income of ₹ 1,32,500 which escaped assessment could be subjected to reassessment within a period of 6 years from the end of the assessment year to which it relates. The time limit of 6 years from the end of the relevant assessment year would expire on 31.03.2012 and since the notice was served on 11.03.2012, it is valid in law. However, after serving notice under section 148 the time limit for completion of assessment would be 9 months from the end of the financial year in which the notice was served. The time limit in this case would be available upto 31.12.2012.

Self-examination Questions

1. Filing of return of income on or before due date is necessary for carry forward of all losses - Discuss the correctness of this statement.
2. Who are the persons authorised to sign the return of income in the case of -
 - a) Hindu Undivided Family
 - b) Company
 - c) Partnership firm
3. List ten transactions for which quoting of permanent account number is mandatory.
4. Write short notes on -
 - a) Regular assessment
 - b) Best judgement assessment
5. Write short notes on -
 - a) Valuation of inventory for tax purposes
 - b) Tax Return Preparers
6. Does the Assessing Officer have power to make a reference to the Valuation Officer? If so, under what circumstances can he exercise such power?
7. (i) Discuss the procedure for assessment in search cases under section 153A of the Income-tax Act, 1961?
(ii) What is the time limit for completion of such search assessments?
8. Is it necessary that the Assessing Officer should record his reasons in writing for exercising the power to reduce the period for making the payment specified in the notice of demand?
9. Anirudh filed return of income for A.Y. 2011-12 claiming a refund of ₹ 37,500. The said refund was granted and paid to the assessee on 1st March, 2012 after processing the return under section 143(1). Later on, the case was taken up for regular assessment by issue of notice under section 143(2) and the said assessment was completed on 7th September, 2012 resulting in demand of ₹ 6,300. Is the assessee liable to pay interest on the amount of refund already granted to him and if so, what is the amount of such interest?
10. Rallis Ltd. filed its original return for the previous year 2009-10 on 28th September, 2010 declaring loss of ₹ 16.25 lakhs. Thereafter, it filed a revised return on 28th February, 2012 declaring loss of ₹ 19.3 lakhs. The assessment of Rallis Ltd. was not completed at that point of time. The Assessing Officer opined that the loss indicated in the original return alone can be carried forward for set-off in the subsequent years, since section 80

does not contemplate that a revised return can be filed. Is the contention of the Assessing Officer correct? Discuss.

11. Can intimation under section 143(1)(a) be issued after notice for regular assessment is issued under section 143(2)?

Answers

8. The Delhi High Court, in *Agricultural Produce Marketing Committee v. Union of India* (2006) 155 Taxman 186, observed that the legal position regarding the competence of the Assessing Officer to reduce the period for payment of the outstanding dues is clearly stated in section 220. A plain reading of the proviso to section 220(1) makes it clear that while the assessing authority has the power to reduce the period for making the payment specified in the notice of demand under section 156, such reduction must be supported by valid reasons to be recorded in writing. Therefore, whenever the competent authority invokes its powers of reducing the period stipulated under section 220, it must take care not only to pass a proper order but also to support the same by cogent reasons.

In this case, the High Court has built in the principles of natural justice into the provisions of section 220(1), by interpreting that the "reason to believe" as required by the proviso to section 220(1), implies that such reasons should be cogent and should be recorded in writing.

9. As per section 234D, where any refund is granted to the assessee after processing the return under section 143(1) and later on, in the regular assessment there is no refund due or the amount refunded exceeds the amount refundable, the assessee shall be liable to pay simple interest at $\frac{1}{2}\%$ for every month or part of a month from the date of grant of refund to the date of such regular assessment on the whole or the excess amount so refunded.

The assessee was granted refund on 1.3.2012 after processing the return under section 143(1). The regular assessment under section 143(3) was completed on 7.9.2012 and resulted in tax payable of ₹ 6,300. Therefore, no refund was due on regular assessment. Accordingly, the assessee is liable to pay interest under section 234D on ₹ 37,500 at $\frac{1}{2}\%$ for 7 months (i.e. from 1st March, 2012 to 7th September 2012; part of a month is to be considered as full month).

Interest payable by the assessee under section 234D works out to ₹1,313 (i.e. ₹ 37,500 $\times \frac{1}{2}\% \times 7$ months).

10. Rallis Ltd. had filed its original return under section 139(3) before the time allowed under section 139(1) i.e. before 30th September, 2010. It has also filed its revised return within the time allowed under section 139(5) i.e. before the expiry of one year from the end of the relevant assessment year or before completion of assessment, whichever is earlier. In this case, the assessment was yet to be completed and one year from the end of the relevant assessment year expires on 31.3.2012. Since Rallis Ltd. has filed its revised return on 28.2.2012, it was within the time allowed under section 139(5).

A perusal of section 139(3) makes it clear that a return of loss filed under section 139(3) may be filed within the time allowed under section 139(1). Once such a return is filed, all the provisions of the Act shall apply as if such return has been filed under section 139(1). In other words, a return filed under section 139(3) is deemed to be a return filed under section 139(1). The provision contained in section 139(3) makes it clear that all the provisions of the Act shall apply to such a return as if it were a return under section 139(1). In view of such a specific provision, there is no further necessity in section 80 to refer to such provision. Hence, there is no reason to exclude the applicability of section 139(5) to a return filed under section 139(3). Therefore, a loss return filed under section 139(3) can be revised by filing a revised return under section 139(5) within the time allowed. Such loss as per the revised return can be carried forward, even though section 80 does not specifically provide for carry-forward of loss which has been determined in pursuance of return filed under section 139(5).

This principle has been supported by the Madras High Court in *CIT v. Periyar District Co-op. Milk Producers Union Ltd.* (2004) 137 Taxman 364 (Mad.)

The contention of the Assessing Officer is, therefore, incorrect.

11. The Apex Court, in *CIT v. Gujarat Electricity Board* (2003) 260 ITR 0084, opined that once regular assessment proceedings have commenced under section 143(2) of the Income-tax Act, 1961, it is a limitation on the jurisdiction of the Assessing Officer to commence proceedings under section 143(1)(a) of the Act. Section 143(1)(a) of the Act enacts a summary procedure for quick collection of tax and quick refunds. Under the scheme, if there is a serious objection to any of the orders made by the Assessing Officer determining the income, it is open to the assessee to ask for rectification under section 154. It is not open to the Revenue to issue intimation under section 143(1)(a) of the Income-tax Act, 1961, after notice for regular assessment is issued under section 143(2). The Legislature intended that where the summary procedure under section 143(1) has been adopted, there should be scope available for the Revenue, either *suo moto* or at the instance of the assessee, to make a regular assessment under section 143(2). The converse is not available: a regular assessment proceeding having been commenced under section 143(2), there is no need for a summary proceeding under section 143(1)(a).