

Miscellaneous Provisions

Some Key Points : Recent Amendments

Non-resident having liaison office required to submit statement in prescribed form to the Assessing Officer [New Section 285]

- (i) A non-resident can operate in India through a branch or a liaison office set up after getting the approval of the Reserve Bank of India. Since the branch constitutes a permanent establishment of the non-resident, it has to file its return of income. However, there is no such requirement as regards a liaison office since no business activity is allowed to be carried out in India via a liaison office of a non-resident.
- (ii) With effect from 1.6.2011, such a non-resident would be required to file a statement in the prescribed form to the Assessing Officer having jurisdiction, within 60 days from the end of the financial year, providing the details in respect of activities carried out by the liaison office in India during the financial year.
- (iii) This requirement has to be complied with by every person, being a non-resident having a liaison office in India set up in accordance with the guidelines issued by the RBI under the Foreign Exchange Management Act, 1999.
- (iv) Since the provision has been made effective from 01.06.2011, the requirement to file such statements would arise for financial year 2011-12 and thereafter and the statement of a particular financial year should be filed on or before 30th May, of the succeeding financial year. For example, the statement for F.Y. 2011-12 should be filed on or before 30th May, 2012.

Omission of the requirement to quote DIN [Section 282B]

- (i) In order to improve the standards of service and transparency in the functioning of the Income-tax Department, a computer based system of allotment and quoting of Document Identification Number (DIN) in each correspondence sent or received by the Income-tax Department was proposed to be introduced with effect from 1st October, 2010 to facilitate tracking of documents and alleviate the taxpayers grievances.
- (ii) Accordingly, section 282B was inserted by the Finance (No.2) Act, 2009, to provide that every income-tax authority shall allot a computer generated DIN 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. Further, every document, letter or any correspondence, received by an income-tax authority or on behalf of such authority, shall be accepted only after allotting and quoting of a computer generated DIN.

27.2 Direct Tax Laws

- (iii) The date for implementation of the DIN was extended to 1st July, 2011 by the Finance Act, 2010.
- (iv) The Finance Act, 2011 has, however, omitted section 282B considering the practical difficulties due to non-availability of the requisite infrastructure on an all India basis.

Service of notice

Section 282 provides that 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 or by electronic mail. 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.

Question 1

Fearless General Finance & Investment Limited, a residuary non-banking company, accepts public deposits, issues deposit certificate and repays the same after some period of time alongwith interest, under different schemes run by it. Following transactions were noted from their books of account:

- (i) Mr. A, an individual, has deposited ₹ 15,000 on 1st May, 2008 for 48 months by bearer cheque and another ₹ 15,000 on 30th June, 2011 in cash to purchase a new certificate of 48 months tenure.
- (ii) Mr. A has applied for premature withdrawal against both the certificates and the company has paid him ₹ 16,500, by a bearer cheque, against principal and interest on 23rd March, 2012, due against his first certificate (purchased in 2008) and ₹ 15,500 in cash on 25th March, 2012, against the second certificate.

Discuss the violation of income tax provision, if any, and consequential penalty for each transaction. Will it make any difference if the certificates were held by Mr. A with his wife Mrs. A, jointly, while repaying back in cash or bearer cheque?

Answer

- (i) There is no violation of section 269SS at the time of acceptance of the first deposit of ₹ 15,000 by bearer cheque on 1.5.2008, since it is not in excess of the threshold limit of ₹ 20,000. However, violation under section 269SS is attracted at the time of acceptance of the second deposit in cash on 30th June, 2011, since as on that date, there is already an outstanding deposit of ₹ 15,000 and another cash deposit of ₹ 15,000 would take the aggregate to ₹ 30,000, which exceeds the threshold limit of ₹ 20,000. Therefore, penalty under section 271D of a sum equal to the amount of deposit taken from Mr. A is attracted for failure to comply with the provisions of section 269SS.
- (ii) In this case, there is a violation of the provisions of section 269T at the time of first repayment by bearer cheque on 23rd March, 2012, since on that date, the aggregate amount of deposits held by Mr. A with the non-banking company (together with interest payable on such deposits) is more than ₹ 20,000. Therefore, penalty under section 271E equal to the amount of deposit so repaid will be attracted for failure to comply with the provisions of section 269T.

However, the second repayment of ₹ 15,500 on 25th March, 2012 in cash cannot be considered as a violation of section 269T, since neither the amount of deposit with interest thereon nor the aggregate amount of deposits held by Mr. A on that date together with interest exceeds the threshold limit of ₹ 20,000.

The provisions of section 269T will be attracted even if the certificate is being held by Mr. A in joint name with his wife.

Question 2

What are the nature and value of transactions to be reported in Annual Information Return by the following entities?

- (i) A banking company;
- (ii) Registrar or Sub-registrar appointed under the Registration Act.

What is the time limit for filing such return?

Answer

Section 285BA read with Rule 114E prescribes the nature of transactions and the value thereof to be reported in Annual Information Return to be filed by any person specified in section 285BA.

- (i) A banking company has to furnish details of cash deposits aggregating to ₹ 10 lacs or more in a year in any savings account of a person maintained in that bank.

A bank has also to furnish the details of payments made by any person against bills raised in respect of a credit card issued to that person aggregating to ₹ 2 lacs or more in the year.

- (ii) A Registrar or a Sub-registrar appointed under the Registration Act, 1908 has to report purchase or sale by any person of immovable property valued at ₹ 30 lacs or more.

The Annual Information Return is required to be filed on or before 31st August immediately following the financial year in which transaction is registered or recorded.

Question 3

The proceedings before the Income-tax Authorities either can be attended by the assessee in person or through an authorized representative. Who can be treated as an authorized representative of the assessee?

Answer

As per section 288, the proceedings before the income-tax authorities can be attended by an assessee in person or through an authorised representative, i.e., a person authorized by the assessee in writing to appear on his behalf, being -

- (i) a person who is a relative or a regular employee of the assessee; or
- (ii) any officer of a Scheduled Bank in which the assessee maintains a current account or has other regular dealings; or
- (iii) a legal practitioner who is entitled to practise in any civil court in India; or
- (iv) a chartered accountant within the meaning of the Chartered Accountants Act, 1949; or
- (v) any person who has passed any accountancy examination recognized in this behalf by the CBDT for this purpose; or
- (vi) any person who has acquired such educational qualifications as prescribed by the CBDT; or
- (vii) any person who, before the coming into force of this Act in the Union territory of Dadra and Nagar Haveli, Goa, Daman and Diu, or Pondicherry, attended any proceedings before an income-tax authority in the said territory on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee
- (viii) any person who was actually practising as an income-tax practitioner, immediately before commencement of the Income-tax Act, 1961.

Question 4

An order for A.Y. 2010-11 was passed by the Assessing Officer as per section 143(3), but the typist wrongly typed in the order, the assessment year as 2009-10 and the relevant previous year as ending on 31.3.2009. 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 5

"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.

27.6 Direct Tax Laws

(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 6

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.

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 ₹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 7

"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;

27.8 Direct Tax Laws

- (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 8

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 9

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.

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

Self-examination Questions

1. Discuss the circumstances under which the Assessing Officer can resort to provisional attachment of the property of the assessee. State the period of time for which such attachment can take place.
2. Explain the validity as well as the consequences of the alienation of assets of a business by an assessee during the pendency of a proceeding under the Income-tax Act.
3. What is an Annual Information Return? Elucidate the provisions of section 285A regarding Annual Information Return.
4. (i) Who are the persons responsible for furnishing an Annual Information Return?
(ii) What is meant by 'specified financial transaction' in the context of Annual Information Return?