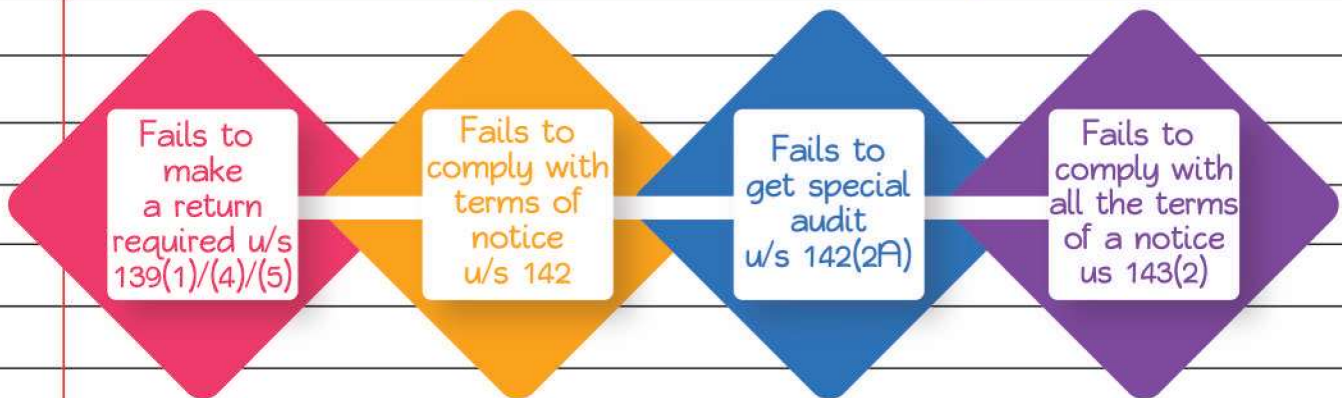


Sec.144 Best Judgement Assessment



Mandatory BJA

1. Fails to make a return required U/s.139(1)/(4)/(5) ,or
- 2.Fails to comply with terms of notice issued U/s.142, or
- 3.Fails to get special audit u/s.142(2A)
- 4.Fails to comply with all the terms of notice U/s.143(2)

The A.O. after taking into account all material which he can gather is empowered to make the assessment of total income or loss to the best of his judgment & determine the sum payable on the basis of such assessment.

- Opportunity of being heard shall not be given for making BJA in case notice u/s 142(1)(i) has been issued to the assessee.
- AO cannot make BJA on ad-hoc-basis he must have evidence.
- No order of assessment shall be made after the expiry of 12 months from the end of the relevant Assessment Year
- No refund can be Issued by AO under this Section.

Optional Mandatory BJA

1. Accounts are incorrect or
2. Accounts are incomplete or
- 3.where no method of accounting has been regularly employed by the assessee or ICDS is followed [Optional BJA] Sec.145[3]

4. ASSESSMENT PROCEDURE

Sec.144A power of JC to Issue Directions

- The J.C. may on his own motion or on a reference by the A.O. or on an application by the assessee, call for & examine records of any proceeding in which an assessment is pending.
- He may issue directions to A.O. to enable him to complete assessment & such directions shall be binding on the A.O
- Such Direction are binding on AO not Binding on Assessee.
- OOBH Must be given.
- No appeal can be filed against the direction u/s 144A.
- The Directions u/s 144A can be in favour of assessee or can be against the assessee.
- No appeal can be filed against the Directions issued u/s 144A. If the Directions issued u/s 144A are prejudicial to the assessee then AC/ DC/ ITO will disallow the deduction or tax the receipt, in accordance with Directions of Joint Commissioner u/s 144A. The assessee can file an appeal to CIT (Appeal) against the assessment order of DC/ AC/ ITO.

Sec.145 Method of Accounting

- > For income under PGPB and IOS the computation shall be as per cash or accrual system of accounting.
- > The assessee is required to follow income computation and disclosure standards as may be notified by the Central Government.
- > If the accounts of the assessee are correct and complete, but the method of accounting is such (in the opinion of the AO) the correct profits cannot be derived there from then the AO may make the assessment u/s 144

British Paints India Ltd v CIT (SC)

Sec.145B Taxability of certain income

- > Interest received by assessee on any compensation/enhanced compensation, shall be deemed to be income of PY in which it is received (Refer IFOS).

4. ASSESSMENT PROCEDURE

- > Any claim for escalation of price in a contract/export incentives shall be deemed to be the income of PY in which reasonable certainty of its realisation is achieved.
- > Assistance in the form of subsidy/grant/cash incentive/duty drawback/waiver/concession be deemed to be the income of the PY in which it is received (refer PGBP)

Sec.147 Income Escaping Assessment

If the A.O. has **reason to believe** that **any income chargeable to tax** has escaped assessment for any AY he may Subject to provision u/s 148 to 153

Assess or reassess such income

Also any other income chargeable to tax which has escaped assessment & Which comes to his notice subsequently in the course of proceedings under this section,

Recomputed the loss or the depreciation allowance/any other allowance, as the case may be, for the AY.

Condition of Assessment:

- 1- AO should have reason to Believe.[Like document/statement/third party confirmation]
- 2- Reason to believe shall be of AO, AO cannot borrow the opinion of other
- 3- **Assessment/ Reassessment cannot be possible of an exempt Income.**
- 4- **AO cannot Assess / Reassess the Income which is subject matter of Appeal/ Revision.[Doctrine of Partial Merger]**

- > Where an assessment u/s 143(3) or 147 has been made, no action shall be taken u/s 147 beyond 4 years from the end of the relevant AY. If both conditions are satisfied: 1) Assessee has filed ROI
2) Assessee disclose truly / fairly all information necessary for Assessment.

4. ASSESSMENT PROCEDURE

Notes :

- > Concept of Partial merger has been affirmed u/s 147 i.e. he can assess/ reassess the issue u/s 147 which has not gone to appeal or revision
- > ~~Where the income/assets are located outside India & they are not reported u/s 92E then it would be deemed as Income has escaped the assessment.~~

MEANING OF INCOME ESCAPED- Explanation 2

- ✓ **No return of income filed**, though income exceeds the basic exemption limit.
- ✓ **Return is furnished but no assessment has been made** & the A.O. notices that the assessee has understated the income or claimed excessive loss, deductions etc.
- ✓ **Where an assessment has been made** but -
 - # The income chargeable has been under-assessed; or
 - # such income is assessed at too low rate; or
 - # excessive relief was given
 - # excessive loss, depreciation or other allowances has been computed.
- ✓ Where an assessee has **failed to furnish a report** in respect of any international transaction u/s 92E.
- ✓ Where **a person is found to have any asset** (including any financial interest in any entity) **located outside India**.
- ✓ Information / Document u/s 133C

Return if Filled	# It is noticed by AO in such Information that assessee has Understated Income or # Claimed Excess Loss/Deduction/Allowance/relief in the return
Return Not filled	Such Information provides that total income exceed BEL

All the above amendments shall apply to proceedings for earlier years also.

Reason to Believe :- In the following cases Assessee shall deemed to have reason to believe.

1. Later of SC/HC Judgement

4. ASSESSMENT PROCEDURE

2. Retrospective amendment in Law
3. Fresh evidence in possession of AO

No reason to believe :-

- ❖ Mere gossip, Rumor, or suspicion is not a sufficient cause
- ❖ AO cannot make assessment to make roving and fishing inquiries
- ❖ Change in opinion of AO [CIT vs Kelvinator India 2010(SC)]
- ❖ On the date of issue of notice there were no amendment subsequently retrospective amendment was brought it will not be a reason for Assessment [Godject Industries Ltd Vs. B.S. Singh]
- ❖ AO completed assessment u/s 143(3) holding that loss was non speculative after 4 years Ao reopened the assessment recording the reason that a mere relook at accounts, it is noticed that loss in trading is speculative, which cannot be setoff with non speculative Income . It was held that reopening cannot be done as there was no failure on the part of assessee to disclose the true and fair Information.[ACIT vs. ICICI securities primary dealership 2012 SC]
- ❖ Report of DVO is merely as estimation it cannot be reason to believe [ACIT vs. Dhariya construction 2011 SC]
- ❖ Change in Incumbent of office & new officer applied new theory this shall amount to Change in opinion this cannot be reason for 147 [H.K.Buildcon]
- ❖ Reopening cannot be done on the basis of Audit objection.
- ❖ Assessee filled return which was processed u/s 143(1) later on survey was conducted based on survey report AO opened Assessment u/s 147 held that survey report cannot be the Basis for 147.[Hemant Trader vs ITO 2015]
- ❖ No of time Reassessment can be done: if condition of Sec.147 is satisfied it can be done for any number of Time.

Procedure of Assessment [GKN Driveshaft SC]

- S.1 AO shall have reason to believe S.3: Issue of Notice u/s 148
- S.2 Approval of Higher authorities u/s 151