

4. ASSESSMENT PROCEDURE

Sec.241A Withholding of refund in certain cases

Where refund of any amount becomes due to the assessee under the provisions of 143(1) & AO is of the opinion, having regard to the fact that a notice has been issued u/s 143(2) in respect of such return, that the grant of the refund is likely to adversely affect the revenue, he may, for reasons to be recorded in writing & with previous approval of PCIT / CIT, as case may be, withhold the refund up to the date on which the assessment is made.

From 01st Oct'2019, Document Identification Number has come into existence. Every CBDT communication must contain DIN & document without DIN shall be deemed to have never been issued by it,

- 1) Notice
- 2) letter, order, summon or
- 3) other correspondence



Sec.142[1] Inquiry before Assessment

Inquiry before Assessment: for the purpose of making Assessment AO shall require the Assessee

142[1][i] Filling of ROI

AO shall require the Assessee to File ROI in prescribe time & manner

The ROI so filled shall deemed to be filed u/s 139

142[1][ii] Providing the Information.

To produce, or cause to be produced, such accounts or documents as the AO may require, or [Including the statement of Assets & Liability, not for more than 3 years prior to PY]

Previous approval of JC is required if details of all assets & liability are required not included in Account.

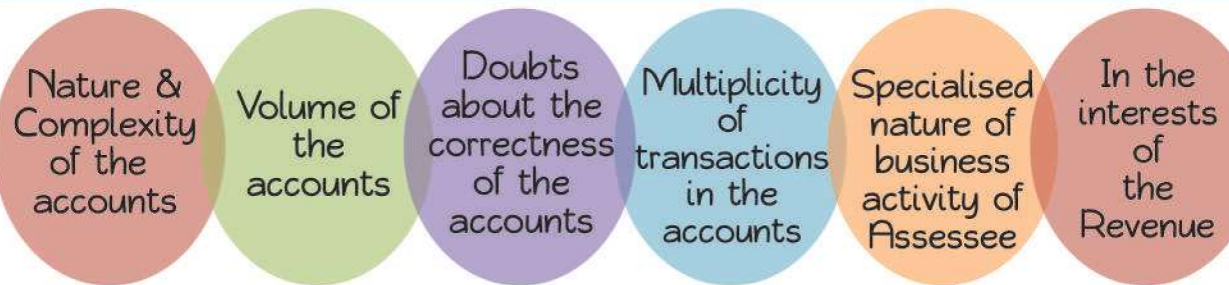
- # This notice can be issued without any time limit Notice [But obviously before the completion of time limit of Assessment u/s 153(1)]
- # Assessee shall be given an opportunity of being heard [except in case of Assessment u/s 144 [BJA] in respect of material gathered.
- # Penalty
 - 1) Best judgement u/s 144
 - 2) Penalty u/s 272A(1)(d)- ₹10000 for each default
 - 3) Prosecution u/s 276 upto 1 year
 - 4) Issue order u/s 132 for search and seizure.
- # Normally notice u/s 142(1)(ii) is issues with the notice of assessment u/s 143(2),144,148,153(A). AO can't complete the Assessment without issuing notice u/s 142(1)(ii).
- # Notice u/s 142(l)(ii) can be issued whether the assessee has filed return of income or not.
- # By issuing a notice u/s 142(l)(ii) alone, the AO cannot make an assessment. Normally, the notice u/s 142(l)(ii) is issued after giving the following notices:
 - a) Scrutiny Notice u/s 143(2)
 - b) Show cause notice u/s 144 *
 - c) Notice u/s 148
 - d) Notice u/s 153A

* If reply to the show cause notice issued u/s 144 is unsatisfactory, then the Assessing Officer issues notice under section 142(l)(ii) to gather information for the purposes of making best judgment assessment.

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Sec.142[2A] Special Audit

If, at any stage, of the proceedings before him, the AO having regard to



1. AO is of the opinion that it is necessary to do so, he may give Direction for Special Audit with prior approval of CCIT / CIT. at any stage of Proceeding
2. However opportunity of being heard has to be given to the assessee before giving such a direction.
3. Once direction is given
 - a. Assessee should cooperate with the Auditor(CA - nominated by PCCIT/ CCIT/PCIT/CIT for getting the A/c details
 - b. Auditor should submit the report in form 6B
4. Notes:
 - A. AO directs the time limit for completion of Assessment
 - B. 142(2A) can be ordered during Pendency of Assessment /Reassessment not after the completion of Assessment
 - C.The aggregate of period originally fixed + extended shall not, in any case, 180 days .If not submitted within 180 days / delayed then report is Invalid.
 - D. Assessing Officer may, suo motu, or on an application made in this behalf by the assessee and for any good and sufficient reason, extend the said period by such further period as he thinks fit.
 - E. If directions are issued without Show Cause Notice, Assessee can file writ petition in High Court.
5. Remuneration : Determined by CCIT/CIT & paid by CG
6. Audit :
 - Even if earlier audit is completed

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- AO cannot make reference for Special Audit without examining the Books of Account

7. Consequences of non Compliance


- ▣ Best Judgement Assessment u/s 144
- ▣ Penalty upto - ₹10000 u/s 272A
- ▣ Prosecution u/s 276D may extend to 1 year
- ▣ Issue order u/s 132 for search and seizure

No appeal can be filed against direction issued u/s 142(2A) or any notice issued by AO under the Income tax Act. The assessee has a constitutional remedy in case he wants to challenge the direction u/s 142(2A) or any other notice of Assessing Officer. The assessee can file a WRIT PETITION in the High Court challenging the validity of the direction u/s 142 (2A) or any other notice issued by AO. Thereafter the assessee can file a Special Leave Petition (SLP) to the Supreme Court.

WRIT PETITION & SLP can be filed only if there is no remedy in law.

Sec.142A Estimation by Valuation Officer



1. AO may, for the purposes of assessment or reassessment, make a reference to a Valuation Officer to estimate value, including FMV, of any asset, property / investment & submit copy of report to him.
2. The Assessing Officer may make a reference to the Valuation Officer whether or not he is satisfied about the correctness or completeness of the accounts of the assessee.
3. Assessment shall be Pending
4. Valuation officer shall estimate the value of  Assets
Investment
Property
5. The Valuation Officer may estimate the value of the asset, property or investment to the best of his judgment, if the assessee does not co-operate or comply with his directions.

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6. The Valuation Officer shall send a copy of the report of the estimate made to the AO and the assessee, within a period of 6 months from the end of the month in which a reference is made.
7. The Assessing Officer may, on receipt of the report from the Valuation Officer, and after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.

Sec 143(2) Notice for Making Scrutiny Assessment

Where a return has been furnished u/s 139, or in response to a notice u/s 142(1), the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return.

Provided that no notice under this sec shall be served on the assessee after the expiry of 6m from the end of the FY in which the return is furnished.

SIMPLIFIED ANALYSIS :

- 1) Where ROI is filled u/s 139 or 142[1] the AO or Prescribe Income Tax Authority [but not below ITO} who has been authorized by CBDT shall serve a notice.
- 2) Notice shall be served within 6m from end of FY in which the return is made.
- 3) Notice is Mandatory, if notice is not served/timely served Scrutiny is illegal.
- 4) Notice is required to be served (received by Assessee), not just issued.
- 5) If Assessee filed revised return after serving of Notice then fresh notice shall be served
- 6) Notice shall require the Assessee to appear before AO on specified date &

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bring such documents as may be specified.

7) Notice u/s 143(2) can be issued even if intimation u/s 143(1) is issued.

8) Notice u/s 142(1) & 143(2) can be issued simultaneously.

9) Non Compliance - a. Best Judgement Assessment u/s 144

b. Penalty u/s 272A(1) - ₹ 10,000/-

Sec 143(3) Regular/ Scrutiny Assessment

On the day specified in the notice issued u/s 143(2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as AO may require on specified points, and after taking into account all relevant material which he has gathered, the AO shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

Provided that in the case of a -

a. research association u/s 10(21)

b. news agency u/s 10(22B)

c. association or institution u/s 10(23A)

d. institution u/s 10(23B)

e. fund, institution, trust, university/other educational institution/hospital or other medical institution u/s 10(23C)(iv),(v),(vi)(via)

which is required to furnish the ROI u/s 139(4C) , no order making an assessment of the total income or loss of such research association, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical institution, shall be made by AO, without giving effect to sec 10, unless-

i) the AO has intimated the Central Government or the prescribed authority the contravention of clause (21) / (22B) / (23A) / (23B) / (23C)(iv) / (23C)(v) / (23C)(vi) / (23C)(via) section 10, as the case may be, by such research association, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical

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institution, where in his view such contravention has taken place; and

- ii) the approval granted to such research association or other association or fund or trust or institution or university or other educational institution or hospital or other medical institution has been withdrawn or notification issued in respect of such news agency / fund or trust or institution has been rescinded

SIMPLIFIED ANALYSIS

The A.O. shall if he considers it necessary, take up the case for regular assessment by issuing a notice (Sec.143(2)), requiring the assessee to attend his office or produce any evidence on which the assessee may rely in support of return, to ensure that the assessee:

1. has not understated Income;
2. has not overstated the loss
3. has not underpaid the tax.

Assessment is possible only if returned is filled if return is not filled no Scrutiny assessment can be made.

3rd proviso : If gross receipt of the trust covered u/s 10(23C) is more than 20% of total receipt, AO shall not grant exemption

Additional Power of AO u/s 143[3]

1. The AO is satisfied that the activities of university/college/institution referred to in section 35(1)(ii)/(iii) are not being carried out in accordance with all or any of the conditions subject to which approval was given to such institution.
2. He may recommend the CG to withdraw the approval given u/s 35.
3. Before recommending the CG the AO will have to give a reasonable opportunity of showing cause against the proposed withdrawal to the university/college, etc.
4. CG may withdraw the approval & forward a copy to concerned institution.
5. No exemption u/s 10(23C) or 11 & 12 by AO for the PY in which Income of trust exceed 20% of total receipt, whether/not approval has been cancelled

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Passing of Order:

1. After making Assessment Ao shall pass order called as Assessment order.
2. The order can be passed within time limit u/s 153(1) i.e. before expiry of 18 months from end of AY in which income was first assessable.
3. The order shall be speaking order

Judicial Updates related to Sec.143(3)

1. **Shelly Products (SC)**: AO can assess the income lower than Return Income.
2. **Goetze (India) Ltd vs CIT (SC)** :

Facts of the Case : For AY 2018-19 the assessee filed its return on Sept 30, 2018 and on Nov 12, 2019 sought to claim a deduction by way of a letter addressed to AO. The AO disallowed it on the ground that there was no provision in the Income-tax Act, 1961 allowing an amendment in the return without a revised return. The Tribunal confirmed this, as did the High Court.

Held : The Supreme Court held that a claim can be made before the AO in the assessment proceedings only through a revised return and not through a letter. Therefore, if a deduction has not been claimed in the return & the assessee wants to claim the said deduction in the assessment proceedings then he can do so, only by filing a revised return. The AO cannot entertain such claim made by the assessee through a letter. The Supreme Court also observed that in this case they were dealing with the power of Assessing Officer and not with the power of ITAT which has the power to entertain a new ground of appeal not raised earlier as held in National Thermal Power Supply Co.

3. Where the return is Invalid the Assessment on such return is also Invalid

Remedies against Regular Assessment

Appeal to CIT[A] - ✓ Rectification u/s 154 - ✓ Revision by CIT - ✓

No order of assessment u/s 143(3) / 144 shall be made after the expiry of 12 months from the end of the relevant Assessment Year [Sec 153(1)]