

## 4. ASSESSMENT PROCEDURE

- 2) The Commissioner shall direct the AO to make an application under sub-sec (1) only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case; and in case no such acceptance is received, the Commissioner shall proceed in accordance with the provisions contained in sec 253.
- 3) Where the order of the Commissioner (Appeals) referred to in sub-section (1) is not in conformity with the final decision on the question of law in the other case, the Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal against such order.
- 4) Every appeal under sub-section (3) shall be filed within 60 days from the date on which the order of the Supreme Court in the other case is communicated to the Commissioner.

Notes :

- i) The above application can be filed only if assessee gives the acceptance that Question of Law in relevant case is identical with Question of Law in other case which is pending before Supreme Court.
- ii) If assessee, does not give acceptance, then Department will file normal appeal to ITAT.
- iii) If above application has been filed after getting acceptance from assessee, and later on the Supreme Court.

**CASE I Decides in favour of assessee** in other case, then the matter ends.

No appeal by Department to ITAT in the relevant case

**CASE II Decides against the assessee** in other case. The CIT will direct the Assessing Officer to file appeal to ITAT in relevant case against the order of CIT(A) and such appeal shall be filed within 60 days from the date the order of Supreme Court is communicated to the CIT.

### Sec 281 Certain Transfers to Be Void

As a safeguard against non-realisation of revenue due to fraudulent transfers of assets by a defaulting assessee, it is provided under this Section that, certain transfers specified therein are deemed to be void. Accordingly, in cases where, during the pendency of any proceeding under the Income-tax Act or after the completion thereof, any assessee creates a charge on, or parts with, the possession (by way of sale, mortgage, gift, exchange, or any other mode of transfer whatsoever) of any of his assets in favour of any other person, such a charge or transfer will be deemed to be void as against any claim in respect of any tax, penalty, interest or fine payable by the assessee as a result of the completion of the proceedings or otherwise. However, the charge or transfer made by the assessee would not be void in case where it is made.

- a) for adequate consideration and without any notice of the pendency of such proceeding or, as the case may be, without any notice of such tax or other monies remaining payable by the assessee; or
- b) with the previous permission of the Assessing Officer.

This section applies to all cases where the amount of tax or other sum of money which is payable or likely to be payable exceeds ₹5,000 & the assets which are charged or transferred by the assessee exceeds ₹10,000 in value. For this purpose, the term 'assets' should be taken to mean land, buildings, machinery, plant, shares, securities and fixed deposits in bank to the extent to which any of these assets do not form part of the stock-in-trade of the business carried on by the assessee. In other words, if these items represent the stock-trade of the assessee's business, their transfer would not be treated as void.

## 4. ASSESSMENT PROCEDURE

### Sec 281B Provisional Attachment to Protect the Interest of The Revenue in Certain Cases

1) Where, during the pendency of any proceeding for the assessment of any assessment or reassessment of any income which has escaped assessment, the AO is of the opinion that, for the purpose of protecting the interest of the Revenue, it is necessary to do so, he may, by an order in writing, attach provisionally any property belonging to assessee.

However, before passing an order, the AO is required to take the prior permission of the Chief Commissioner of Income-tax or Commissioner of Income-tax.

2) Every provisional attachment would cease to be effective after the expiry of a period of **six months** from the date on which order for the attachment is passed by AO.

**Provided that the Chief Commissioner or Commissioner, may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years or sixty days after the date of order of assessment or reassessment, whichever is later.**

3) Where the assessee furnishes a guarantee from a scheduled bank for an amount not less than the FMV of the property provisionally attached under sub-sec (1), AO shall, by an order in writing, revoke such attachment.

Provided that where the AO is satisfied that a



## 4. ASSESSMENT PROCEDURE

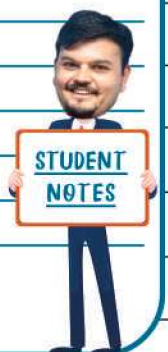
guarantee from a scheduled bank for an amount lower than the fair market value of the property is sufficient to protect the interests of the revenue, he may accept such guarantee and revoke the attachment.

4) The AO may, for the purposes of determining the value of the property provisionally attached under sub-section (1), make a reference to the Valuation Officer referred to in sec 142A, who shall estimate the fair market value of the property in the manner provided under that section and submit a report of the estimate to the AO within a period of thirty days from the date of receipt of such reference.

5) An order revoking the provisional attachment under sub-section (3) shall be made-

- i) within 45 days from the date of receipt of the guarantee, where a reference to the Valuation Officer has been made under sub-section (4); or
- ii) within 15 days from the date of receipt of guarantee in any other case.

6) Where a notice of demand specifying a sum payable is served upon the assessee and the assessee fails to pay that sum within the time specified in the notice of demand, the AO may invoke the guarantee furnished under sub-section (3), wholly or in part, to recover the amount.



## 4. ASSESSMENT PROCEDURE

- 7) The Assessing Officer shall, in the interests of the revenue, invoke the bank guarantee, if the assessee fails to renew the guarantee referred to in sub-section (3), or fails to furnish a new guarantee from a scheduled bank for an equal amount, 15 days before the expiry of the guarantee referred to in sub-section (3).
- 8) The amount realised by invoking the guarantee referred to in sub-section (3) shall be adjusted against the existing demand which is payable by the assessee and the balance amount, if any, shall be deposited in the Personal Deposit Account of the PCIT / CIT in the branch of the Reserve Bank of India or the State Bank of India or of its subsidiaries or any bank as may be appointed by the Reserve Bank of India as its agent under the provisions of sec 45(1) of the Reserve Bank of India Act, 1934 at the place where the office of the PCIT / CIT is situate.
- 9) Where the AO is satisfied that the guarantee referred to in sub-section (3) is not required any more to protect the interests of the revenue, he shall release that guarantee forthwith.

Explanation - For the purposes of this section, the expression "scheduled bank" shall mean a bank included in the Second Schedule to the Reserve Bank of India Act, 1934.



## 4. ASSESSMENT PROCEDURE

Sec 153 Time limit for completion of assessment, reassessment & recomputation.

## 4. ASSESSMENT PROCEDURE

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

### **PURSHOTAMDAS T. PATEL**

In this case, the Assessing Officer passed assessment order u/s 143(3) on 31.3.2021 for AY 2019-20. The said order was served on the assessee on 2.4.2021. The demand notice u/s 156 was prepared on 5.4.2021 and was served on the assessee on 6.4.2021.

The Court observed that section 153(1) provides that 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. The Court held that "Assessment" is an integrated process involving not only the determination of total income but also the determination of tax. Therefore, unless the total income is determined and tax thereon is also levied, it cannot be said that the process of assessment is complete. The assessment can be said to be complete when income is determined and tax is levied thereon through a notice of demand under section 156. In the present case, since the notice of demand is prepared on 5.4.2021, the assessment can be said to be completed on 5.4.2021 and is thus time- barred and invalid.

✌ **Sec 153(2)** - No order of **assessment or reassessment u/s 147** shall be made **after the expiry of 12 months from the end of the FY** in which notice u/s 148 was served on the assessee.

No order of assessment or reassessment u/s 147 shall be made after the expiry of 9 months from the end of the FY in which notice u/s 148 was served on the assessee, where the notice u/s 148 is served upto 31.3.2019.

✌ **Sec 153(3)** - Notwithstanding anything contained in sub-section (1) & (2), where **an assessment is cancelled or is set- aside by an order u/s 254, 263 or 264** and a direction is given to the AO in such order to make a fresh

## 4. ASSESSMENT PROCEDURE

assessment, then such fresh assessment shall not be made after the expiry of 12 months from the end of the FY in which order u/s 254 is received by the CIT or order u/s 263 or 264 is passed by the CIT, as the case may be.

Notes :

- i) ~~However, where the order u/s 254 is received by CIT or order u/s 263 / 264 is passed by CIT upto 31.03.2019 the words "12 months" shall be substituted by words "9 months".~~
- ii) The CIT (Appeals) cannot cancel/ set-aside the assessment and refer it back to the Assessing Officer for fresh assessment.
- iii) If by an order u/s 254, 263 or 264, the assessment is cancelled/ set-aside & a direction is given to make a fresh assessment then, the AO shall make the fresh assessment under the same section under which the original assessment, which is cancelled/ set-aside, was made.
- iv) For making a fresh assessment to give effect to the order u/s 254, 263 or 264, notice u/s 143(2)/ 144/ 148 is not required to be issued again as the previous notice issued for making the original assessment is still valid.

☺ **Sec 153(4)** - Where a reference has been made to the Transfer Pricing Officer u/s 92CA to determine the arm's length price, the time period for completion of assessment/ reassessment shall be increased by 1 year. This is explained below:

	Normal Period of Assessment / Reassessment	Period of Assessment/ Reassessment where a reference has been made to TPO to determine Arm's Length Price
Assessment u/s 143(3) or u/s 144	12 m from the end of the relevant AY	(Reference to TPO made during the course of assessment proceedings u/s 143(3)/ 144) 24 from the end of the relevant AY



## 4. ASSESSMENT PROCEDURE

	Normal Period of Assessment / Reassessment	Period of Assessment/ Reassessment where a reference has been made to TPO to determine Arm's Length Price
Assessment or reassessment u/s 147	12 months from the end of the FY in which notice u/s 148 was served.	(Reference to TPO made during the course of assessment or reassessment proceedings u/s 147) 24 m from the end of the FY in which notice u/s 148 was served.
Fresh assessment u/s 143(3) / 144/147 where assessment has been cancelled & referred back to AO for fresh assessment by an order u/s 254, 263 or 264	12 months from the end of the FY in which order under section 254 is received by the CIT or order u/s 263 or 264 was passed by the CIT.	(Reference to TPO made in the proceedings for fresh assessment) 24 months from the end of the FY in which order u/s 254 is received by the CIT or order u/s 263 or 264 was passed by the CIT.

### ✌ Sec 153(5) - Appeal Effect or Revision Effect

Where effect to an order u/s 250 / 254 / 260A / 262 / 263 / 264 is to be given by the AO, otherwise than by making a fresh assessment or reassessment, such effect shall be given within a period of 3 months from the end of the month in which order u/s 250 / 254 / 260A / 262 is received by the Commissioner, or the order u/s 263 / 264 is passed by the Commissioner.



## 4. ASSESSMENT PROCEDURE

Provided that where it is not possible for the AO to give effect to such order within the aforesaid period, for reasons beyond his control, the Commissioner on receipt of such request in writing from the AO if satisfied, may allow an additional period of 6 months to give effect to the order.

Provided further that where an order u/s 250 / 254 / 260A / 262 / 263 / 264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the order giving effect to the said order u/s 250 / 254 / 260A / 262 / 263 / 264 shall be made within the time specified in sub-section (3).

### 👉 Sec 153(6) - Time Limit for Completion of Assessment or Reassessment in Certain Cases Pursuant to Directions of Appellate Authorities and Courts

Nothing contained in sub-sections (1) and (2) shall apply to the following classes of assessments, reassessments and recomputation which may, subject to the provisions of sub-sections (3) and (5), be completed—

- 1) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order u/s 250 / 254 / 260 / 262 / 263 / 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act, on or before the expiry of 12 months from the end of the month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be; or

