

ASSESSMENT UNDER SECTION 143(3) OF THE INCOME TAX ACT, 1961

BY CMA AJITH SIVADAS

- ✚ Every taxpayer has to furnish the details of his income to the Income-tax Department. These details are to be furnished by filing up his return of income.

- ✚ Once the return of income is filed up by the taxpayer, the next step is the processing of the return of income by the Income Tax Department.

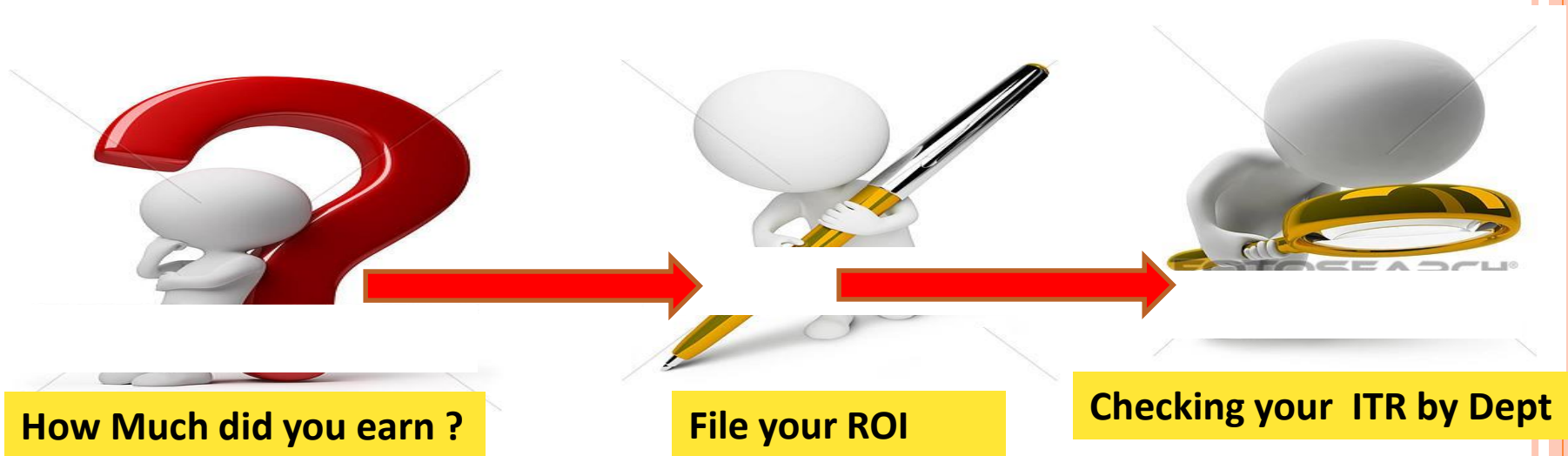
- ✚ **The process of examining the return of income by the Income- Tax department is called as “Assessment”.**

- ✚ Assessment also includes re-assessment and best judgment assessment under section 144.

WHAT IS ASSESSMENT UNDER INCOME TAX ACT?

What is Assessment Procedure ?

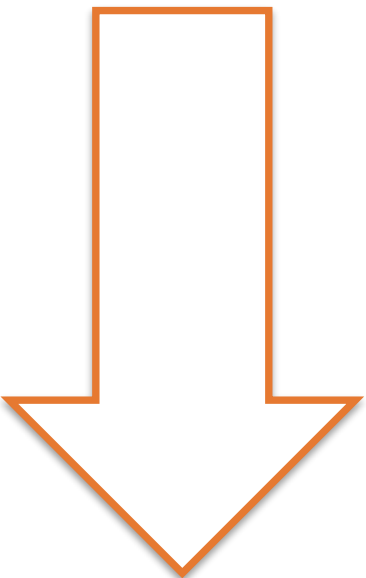
- Assessment simply means determination of Tax
- It is Procedure for determining of Tax Liability and **Recovery of Tax**
- This is determined as per Taxation law existing in that particular Assessment Year



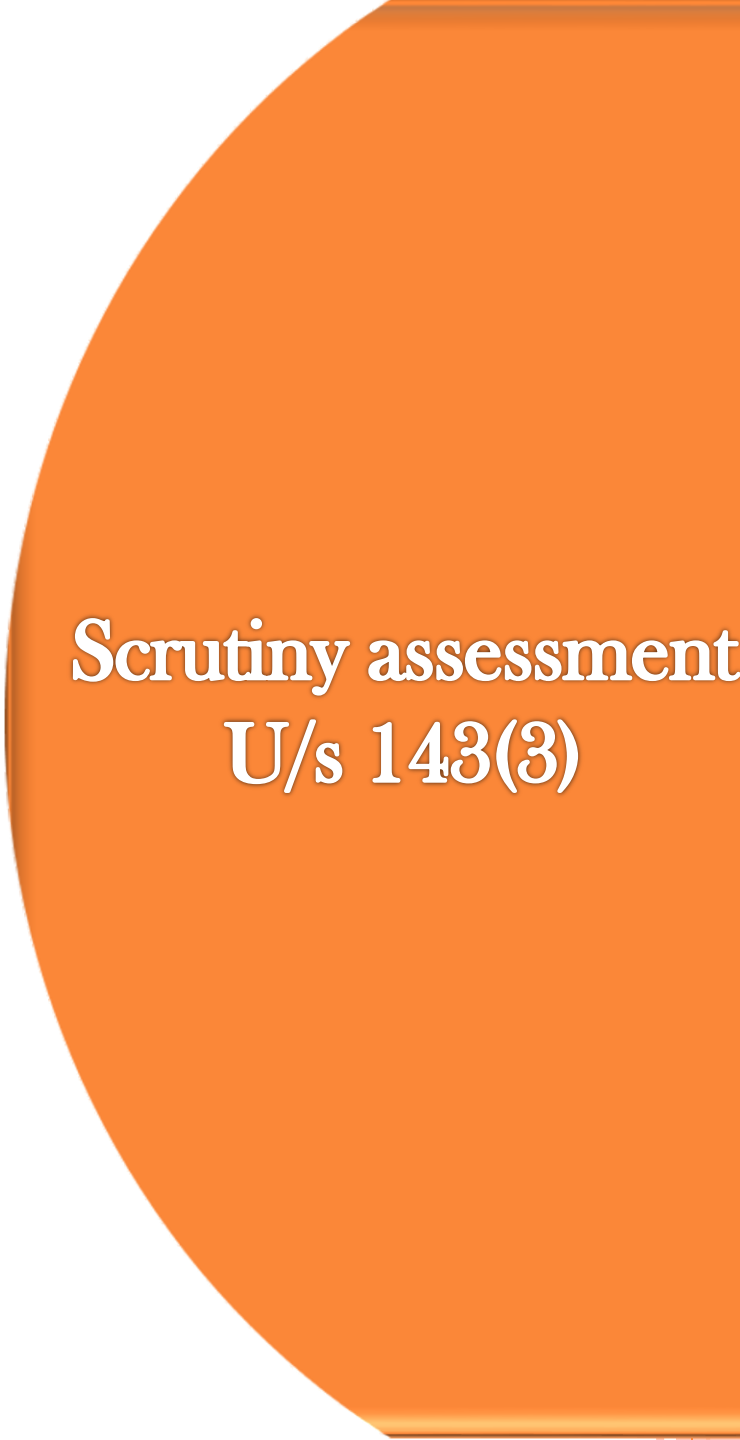
- Self Assessment
- Summary Assessment(sec 143(1))
- Scrutiny assessment.(Sec - 143(3))
- Best Judgement Assessment(Sec-144)
- Income Escaping Assessment(Sec 147)



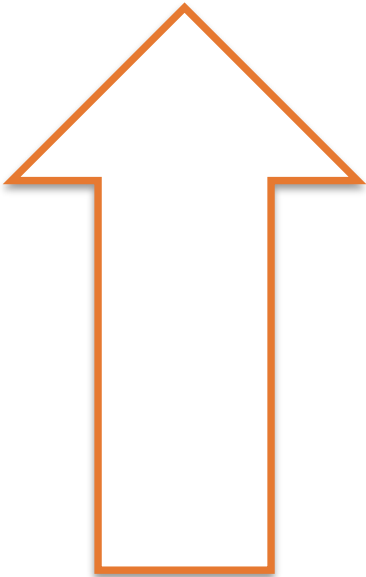
TYPES OF ASSESSMENTS



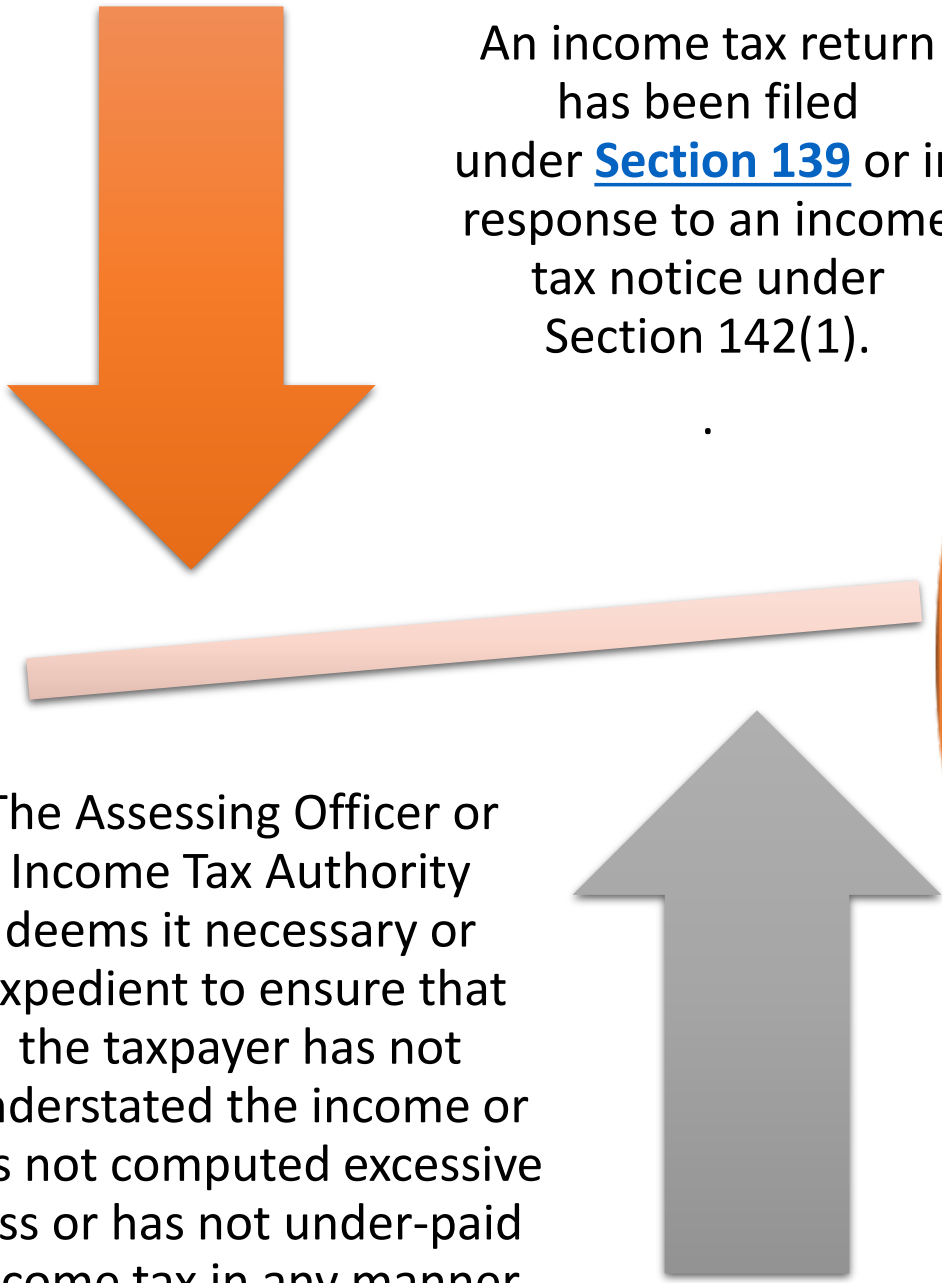
This is a
detailed
assessment
and is referred
to as scrutiny
assessment



Scrutiny assessment
U/s 143(3)



At this stage a detailed
scrutiny of the return of
income will be carried out
is to confirm the
correctness and
genuineness of various
claims, deductions, etc.,
made by the taxpayer in
the return of income.



An income tax return
has been filed
under [Section 139](#) or in
response to an income
tax notice under
Section 142(1).

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The diagram features a balance scale with a horizontal beam. On the left side, there is a large orange arrow pointing downwards. On the right side, there is a large grey arrow pointing upwards. The scale is tilted slightly towards the left.

The Assessing Officer or
Income Tax Authority
deems it necessary or
expedient to ensure that
the taxpayer has not
understated the income or
has not computed excessive
loss or has not under-paid
income tax in any manner

Applicability of Scrutiny Assessment

Purpose of Scrutiny Assessment



To ensure that there is no Understated income, or

To ensure that there is no Computation of excessive loss, or

To ensure that there is no Underpaid tax in any manner.

Types of Scrutiny



MANUAL
SCRUTINY

The diagram consists of two orange arrows pointing in opposite directions, one to the left and one to the right, connected by a central horizontal line that forms a continuous path. The left arrow is labeled 'MANUAL SCRUTINY' and the right arrow is labeled 'COMPULSORY SCRUTINY'. The arrows are set against a light gray background.

COMPULSORY
SCRUTINY

Manual scrutiny cases

1. Not filing your Income tax return

Non filing of the returns for past few years due to the lethargy, laziness, overconfidence, you or your consultants are pre-occupied, are out of station or country, you could not file due to health reasons, pre occupied with your work, pre occupied with some litigations, Ignorance of law etc– will not absolved from getting the case selected for scrutiny.

2. Declaring lesser income compared to earlier years or Declaring more loss compared to earlier years

Substantial & significant reduction in the income or significant increase of losses compared to last year, then it may cause suspicion to the Income tax officer and he may think of selecting the case for scrutiny.

3. Mismatch in TDS credit between the claim and 26AS

If the TDS payer do not remit despite the fact that the TDS is deducted from the account, may not get TDS credit, there will be mismatch of income and TDS in 26AS, resulting in selection of your case for scrutiny

4. Non Declaration of Exempted Income

The income if any is exempted from income tax needed to be disclosed unless it will results a scrutiny

5. Interest from FDs or Savings A/C

6. Claiming large refunds in return of income

7. Taking double benefits due to change in Job

Many times salaried employee who changed job during previous year gets multiple form 16 & fails to declare income from all the employers & calculate and pay the due taxes, if any. It may arise on account of certain deductions & benefits given twice and may be resulted in a scrutiny.

8. High Value Transactions

Department gets information for all your high value transactions from the concerned institution and chances of you coming under scrutiny increases. If you have executed high value transactions either for investments or spending then chances of you getting the notice from IT Department are very high.

For e.g. your credit card usage of more than Rs. 2 lakhs p.a./ investing in FDs for more than Rs. 5 lakhs/ depositing more than Rs. 10 lakhs in your bank account/ investing more than Rs. 2 lakh in Mutual funds or Rs. 1 lakh in Shares or buying or selling property over Rs. 30 lakhs. All these transactions are reported to the IT department under Annual information Returns filed by respective companies and may attract scrutiny by the department.

Compulsory scrutiny cases

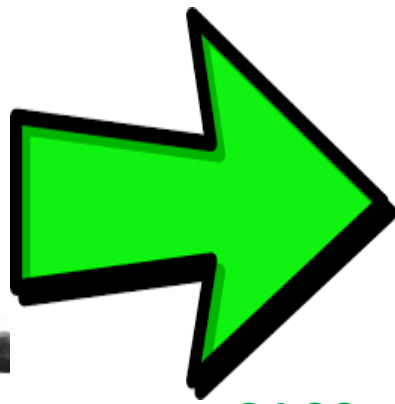
- ◆ Cases involving addition in an earlier assessment year in excess of Rs. 10 lakhs on a substantial and recurring question of law or fact which is confirmed in appeal or is pending before an appellate authority may come under compulsory scrutiny.
- ◆ Cases involving addition in an earlier assessment year on the issue of transfer pricing in excess of Rs. 10 crore or more on a substantial and recurring question of law or fact which is confirmed in appeal or is pending before an appellate authority.
- ◆ All assessments pertaining to Survey under section 133A of the Act excluding the cases where there are no impounded books of accounts/documents and returned income excluding any disclosure made during the Survey is not less than returned income of preceding assessment year. However, where assessee retracts the disclosure made during the Survey will not be covered by this exclusion. The cases where there is information about concealment of income, which may be based on an enquiry report, survey report or any other source, can also be selected for scrutiny. The selection in this manner is made by the assessing officer only with the approval of higher authorities so that the selection is fair and proper.

- ◆ Assessments in search and seizure cases to be made under section 158B, 158BC, 158BD, 153A & 153C read with section 143(3) of the Act and also for the returns filed for the assessment year relevant to the previous year in which authorization for search and seizure was executed u/s 132 or 132A of the Act. In the cases where searches, surveys and enquiries have been conducted finally culminate into scrutiny assessments determining the taxable income and the tax liability of the concerned persons and entities. While framing the assessments, all information gathered about the relevant financial transactions through search, survey or enquiry is logically analysed with a view to determining the correct taxable income. The assessee is given an opportunity to explain their stand and rebut the findings of the enquiry. The process for completing scrutiny assessment in these cases is the same as in the case of returns selected for scrutiny assessment.

- ◆ Cases where registration u/s 12AA of the IT Act has not been granted or has been cancelled by the CIT/DIT concerned, yet the assessee has been found to be claiming tax-exemption under section 11 of the Act. However, where such order's of the CIT/DIT have been reversed/set-aside in appellate proceedings, those cases will not be selected under this clause.
- ◆ Cases where order denying the approval u/s 10(23C) of the Act or withdrawing the approval already granted has been passed by the Competent Authority, yet the assessee has been found claiming tax-exemption under the aforesaid provision of the Act.
- ◆ Cases in respect of which specific and verifiable information pointing out tax evasion is given by Government Departments/Authorities. The Assessing Officer shall record reasons and take prior approval' from jurisdictional Pr. CCIT/CCIT /Pr. DGIT/DGIT concerned before selecting such a case for scrutiny.

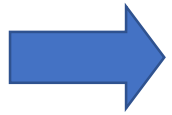
Computer Aided Scrutiny Selection (CASS):.

Cases are also being selected under CASS on the basis of broad based selection filters. List of such cases shall be separately intimated in due course by the DGIT(Systems) to the jurisdictional authorities concerned. The cases for this purpose are mostly selected through the process of computer assisted scrutiny selection (CASS) and there is no element of subjectivity in this process

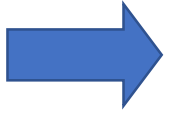


Limited Scrutiny U/s 143(3)

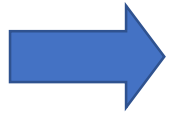
CASS- Computer Assisted Scrutiny Selection



The Central Board of Direct Taxes ('CBDT'), Vide Instruction No.7/2014 Dated 26-9-2014 had clarified the Extent of enquiry in certain category of cases Specified there in, Which are selected for Scrutiny through CASS.



Reasons for selection of case under CASS are – mismatch of ITR Data with AIR information/CIB/26AS



Recent Circulars and Notifications – Instruction No. 20/2015 Dated 29/12/2015

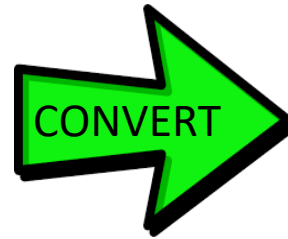


AO Should communicate the Reasons/issues for which the file has been selected in CASS



The Questionnaire under section 142(1)(ii) of the act in 'Limited Scrutiny' Cases shall remain confined only To the specific reasons/ issues for which case has been picked up for scrutiny. Further, the scope of enquiry, Shall be restricted to the 'Limited Scrutiny' issues.

Limited Scrutiny



Complete Scrutiny

During the course assessment proceedings in 'limited Scrutiny' cases, if:

- ❑ It comes to the notice of the Assessing officer that there is potential escapement of income exceeding Rs.5 Lac/10 Lac (for metro cities) requiring substantial verification on any other issue (S), then, the case may be taken up for 'Complete Scrutiny ' with the approval of the Pr. CIT/CIT Concerned.
- ❑ The AO has to take approval of Pr. CIT/CIT in writing after being satisfied about merits of the issue [S] necessitating 'complete Scrutiny ' in that particular case.

'Metro cities ' would mean Delhi, Mumbai, Chennai, Kolkata, Bengaluru, Hyderabad and Ahmedabad.

Procedure of assessment under section 143(3)

- ◆ If the Assessing Officer considers it necessary or expedient to ensure that the taxpayer has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner, then he will serve on the taxpayer a notice requiring him to attend his office or to produce or cause to be produced any evidence on which the taxpayer may rely, in support of the return.



- ◆ To carry out assessment under section 143(3), the Assessing Officer shall serve such notice in accordance with provisions of section 143(2).



◆ Notice under section 143(2) should be served within a period of six months from the end of the financial year in which the return is filed.

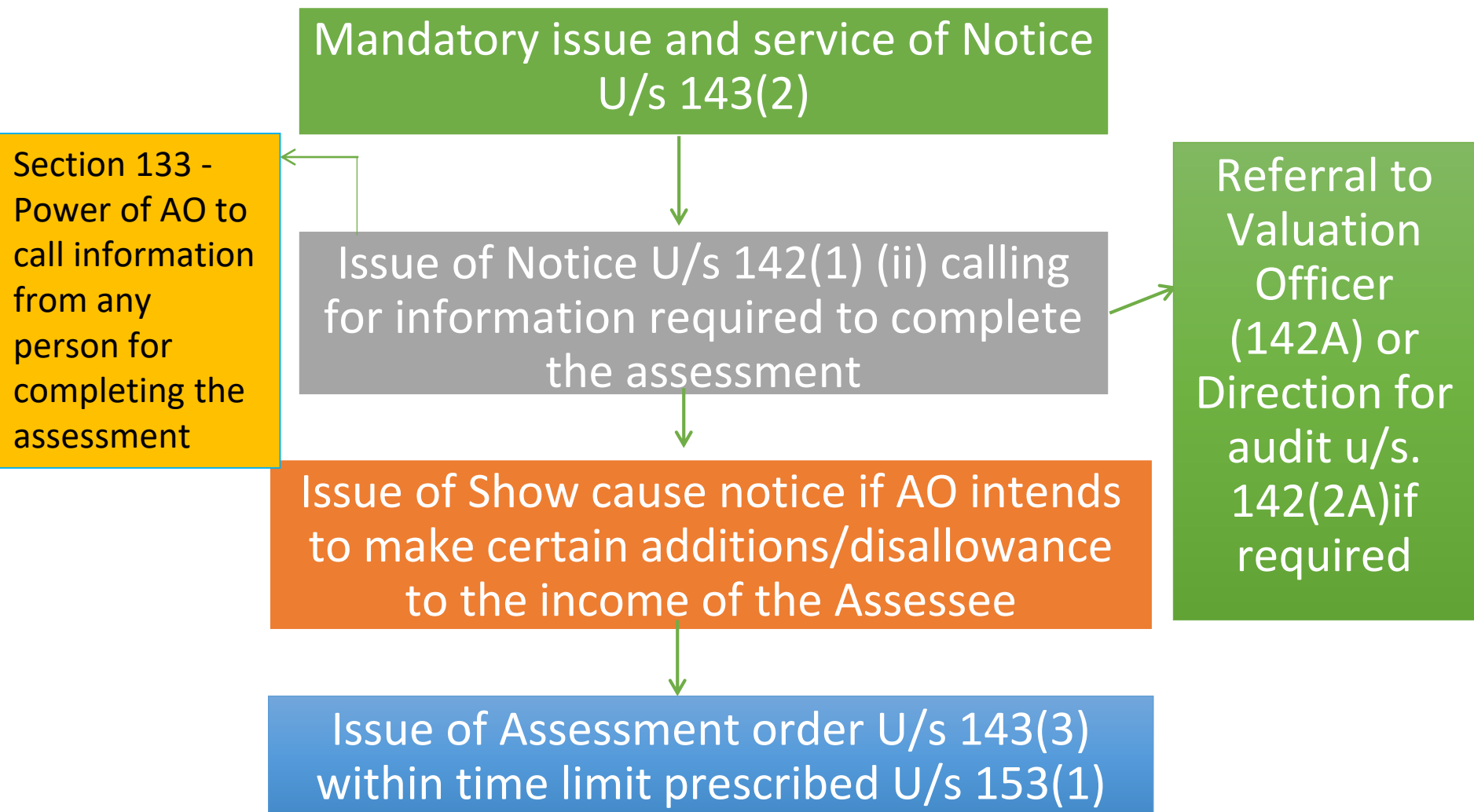


◆ The taxpayer or his representative (as the case may be) will appear before the Assessing Officer and will place his arguments, supporting evidences, etc., on various matters/issues as required by the Assessing Officer



◆ After hearing/verifying such evidence and taking into account such particulars as the taxpayer may produce and such other evidence as the Assessing Officer may require on specified points and after taking into account all relevant materials which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the taxpayer and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

Procedure for Assessment Proceedings under section 143(3)-At Glance



- The Assessing officer shall not require the production of any accounts relating to a period more than 3 years prior to the previous year

■ Notice under Section 143(2) – Scrutiny Notice

This notice is basically sent
after notice u/s 142(1)

It means **AO** was not satisfied with
the produced documents or may be
AO has not received any
documents.

Notice under Section
143(2) means your
return has been
selected for detailed
scrutiny by your
Assessing Officer.

What happened
if the Return is
not filed by the
assessee?



Where the assessee has not furnished his return of income, then notice **under Section 143(2) cannot be issued to him and also scrutiny assessment cannot be done**



In such case, direct **Best Judgement Assessment under Section 144 is done by the AO**. The AO can reduce the income below the returned income and can assess the loss higher than the returned loss under Scrutiny Assessment as per Sec 143(3).



What
happened if
the assessee
do not
comply the
provisions of
the section?


It may result in Best
Judgement
Assessment u/s 144,
or

Penalised under Sec
271(1) (b) i.e. Rs10,000
for each failure, or


Prosecution under Sec
276D which may
extend upto 1 year
with or without fine.

■ Notice under Section 142(1) – Inquiry before assessment

◆ Notice under Section 142(1) is usually served to call upon documents and details from the tax payers, and to take a particular case under assessment.



◆ The basic purpose is to inquire the details of the assessee before making assessment under the Act. It can be related to 'Preliminary Investigation' before starting the assessment.



◆ Compliance with this notice u/s 142(1) is mandatory even if the tax payer is of the opinion that the accounts/ documents requested are irrelevant.

By serving
a notice
u/s 142(1)
the
assessing
officer,
may call
upon the
assessee

- ◆ To furnish a return of income in respect of which he is assessable, where he has not filed his return of income within the normal time allowed.
- ◆ – It may include return in respect of his own income or income of other person for which he is liable to be assessable. Example-In case of legal guardian/deceased person.

- ◆ To produce accounts or documents which the AO may require for the purpose of making an assessment.

- ◆ To furnish in writing any information on matters including statement of the assessee. For Example- statement of assets and liabilities of the assessee on a particular date



What
happened if
the assessee
do not
comply the
provisions of
the section?

It may result in Best
Judgement
Assessment u/s 144,
or

Penalised under Sec
271(1) (b) i.e. Rs10,000
for each failure, or

Prosecution under Sec
276D which may
extend upto 1 year
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MANDATORY ISSUE OF NOTICE UNDER SECTION 143(2)



**Shri Rishav Prakash Jain, New ... vs Ito, New Delhi
on 18 February, 2019
Income Tax Appellate Tribunal - Delhi**

The ld. counsel for the assessee, referring to various decisions including the decision of the Hon'ble Supreme Court in the case of NTPC Ltd. vs. CIT reported In 229 ITR 383 (SC), submitted that the above ground is purely a legal ground and goes to the root of the matter and does not require fresh facts to be investigated and therefore, should be admitted. Referring to the information received under RTI Act, the ld. counsel for the assessee submitted that in the instant case, **no notice u/s 143(2) of the Act was issued subsequent to filing of the return by the assessee in response to notice u/s 148 of the IT Act**. Only notice u/s 142(1) of the Act was issued and served on the assessee. Therefore, in view of the various decisions including the decision of jurisdictional High Court in the following cases the assessment order has to be quashed.

**Shri Rishav Prakash Jain, New ... vs Ito, New Delhi on 18
February, 2019**



Since, in the instant case, admittedly, no notice u/s 143(2) of the Act was issued and served on the assessee after the return in response to notice u/s 148 of the Act was filed by stating that the original return filed may be treated as return filed in response to notice u/s 148, therefore, the reassessment order passed by the Assessing Officer is not sustainable in law. We, therefore, accept the additional ground raised by the ITA No.2061/Del/2012 assessee and quash the order passed u/s 143(3)/147 for non-issuance of notice u/s 143(2) of the Act which is mandatorily required. The additional ground raised by the assessee is accordingly allowed. Since the assessee succeeds on this legal ground, the other grounds being academic in nature are not being adjudicated.

Section 292BB – Effect of Assessment

Where an Assessee has appeared in any Proceeding or co-operated in any inquiry relating to an assessment or re-assessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such Assessee shall be Precluded from taking any objection in any proceeding or inquiry under this Act that the notice was-

- Not served upon him; or
- Not served upon in time; or
- Served upon him in an improper manner;

Provided that nothing contained in this section shall apply where the Assessee has raised such objection before the Completion of such assessment or reassessment.

Referral by AO to Valuation Officer U/s. 142A for valuation



- ◆ AO may make a reference to a valuation officer to estimate the value including fair market value of any asset, Property or Investment.
- ◆ Valuation Officer shall estimate the value after taking into account such evidences as Assessee may produce and any other evidence in his possession.
- ◆ Valuation officer **shall send a copy of report** of the estimation of value to the AO and Assessee **within a period of Six Months** from the **end of the month in which reference is made**.
- ◆ AO after giving the *Assessee an opportunity of being heard*, take into account the report of Valuation officer in making the assessment or reassessment.



Direction by AO U/s. 142 (2A) to get the accounts audited.

- AO if at any stage of proceedings before him having regard to
 1. Nature and Complexity of the accounts
 2. Volume of the accounts
 3. Specialized nature of business activity of the Assessee.
 4. doubts about the correctness of the accounts

And in the interests of the revenue, is of the opinion to get the accounts audited then he will direct the Assessee to do so.

- Prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is required to obtain by AO.
- AO shall not Direct the Assessee to get the accountants so audited unless the Assessee has been given ***a reasonable opportunity of being heard***
- Assessee ***Shall obtain the Audit report from a Chartered Accountant*** in such Form as may be prescribed, **within a period of Maximum 180 days.**

Scrutiny Assessment Order U/s 143(3)

In case of co-operation of the taxpayer and submission of information, after hearing/verifying such evidence and taking into account all the information produced by the taxpayer, the Assessing Officer would pass an order.

On the passing of the order by the Assessing Officer, the assessee has one of the choices below:

- To agree with the order passed by the Income Tax authority and pay any tax demand or receive a refund or accept the loss determined
- Make an application for a refund under Section 154, if any clerical error persists
- Can make a revision application to Commissioner of Income Tax under section 263/264
- Appeal the order

OPPORTUNITY FOR BEING HEARD

Jaffaorulla Syeadunnishaa Vs ACIT (Madras High Court, Madurai)

The Hon'ble Madras High Court set aside the Assessment Order and held that the Assessment Order was wrongfully passed by the Respondent on December 24, 2019 without granting appropriate time to the Petitioner to file a reply within the time limit of December 29, 2019 as per the direction of the Directorate of Income Tax which is a clear violation of principle of natural justice. Further, the Petitioner was not even given an opportunity of personal hearing.

OPPORTUNITY FOR BEING HEARD

CIT vs Eastern Commercial Enterprises 210 ITR 103(CAL)

The assessee must be provide a fair opportunity of being heard during the Assessment proceedings as it is a basic rule of Natural Justice. If the A.O makes any addition on the basis of evidence procured from other sources about which the assessee is not aware then the assessee must be given fair opportunity to rebut or cross examine such evidence.

In CIT vs Eastern Commercial Enterprises 210 ITR 103(CAL) it has been held that an addition made without allowing opportunity of cross examination to the assessee, cannot be sustained.

**What to do when
notice U/s 143(2) is
received?(General
issues)**

**Cases where
amount
deposited with
the firm by the
partners are not
proved**

If the partners in a firm have deposited some money with the firm and the same is not proved as income of the firm by the A.O then such amount cannot be treated as income of the Firm but it will be treated as the income of the partners as held in (2001)

*126 Taxman 533/252 ITR 344
P& H HC.*

Amounts Received as gifts

Where receiving of any gift by the assessee is in question in the Assessment proceedings then affidavit of the donor or the gift deed along with the PAN No of the donor, the source of the gift and the relationship of the donee with the donor should be produced to prove such gift.

Additions cannot be made merely on suspicion

Any addition to the income of the assessee cannot be made only on the base of suspicion. If the assessee has proved the transaction in question then merely on the suspicion the addition cannot be made.

For Example if the assessee has sufficiently proved a deposit transaction from a person then the A.O cannot make addition merely on the ground that the assessee already had enough money on the day of deposit and there was no need for such deposit.

Request for summons to the non- cooperating loan creditor or depositors

Sometimes it happens that the depositors or loan creditors do not cooperate with the assessee in the Assessment proceedings then in such cases the assessee should request the A.O in writing to issue summons u/s 131 to such persons along with their books of accounts or bank statement or any other relevant documents.

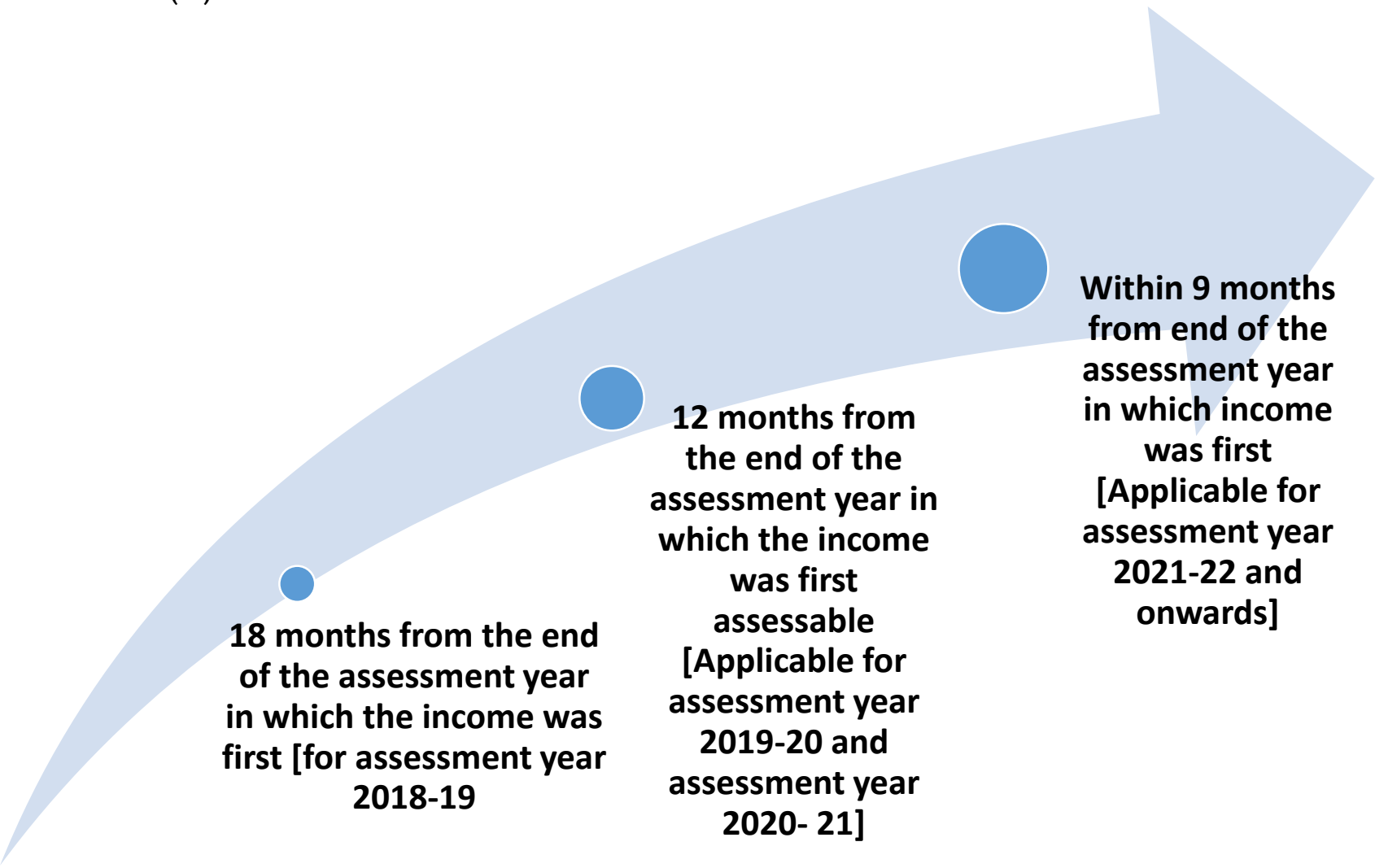
Inadequate withdrawals of partner shown in the books of accounts of firm:

Addition to the income of a firm cannot be made merely on the ground that the withdrawals for household expenses made by the partner from the firm is inadequate or very less. It's not the firm's responsibility to explain or prove that how the partners have managed their household expenses as it was held in (1997) 90 Taxman 330(magazine) Jaipur Tribunal.



Time-limit

As per Section 153, the time limit for making assessment under section 143(3) is:-



18 months from the end of the assessment year in which the income was first [for assessment year 2018-19]

12 months from the end of the assessment year in which the income was first assessable [Applicable for assessment year 2019-20 and assessment year 2020- 21]

Within 9 months from end of the assessment year in which income was first [Applicable for assessment year 2021-22 and onwards]

AMENMENDS in section 143

w.e.f 1st April 2021

Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, 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 sub-section shall be served on the assessee after the expiry of **[three]** months from the end of the financial year in which the return is furnished. *(Inserted w.e.f 01-04-2021 by the finance bill 2021)*

SECTION 143(3A)

The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of making assessment of total income or loss of the assessee under sub-section (3) ***[or section 144]-(inserted w.e.f 01/04/2021)** so as to impart greater efficiency, transparency and accountability by—

- (a) eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible;
- (b) optimising utilisation of the resources through economies of scale and functional specialisation;
- (c) introducing a team-based assessment with dynamic jurisdiction.

SECTION 143(3B)

The Central Government may, for the purpose of giving effect to the scheme made under sub-section (3A), by notification in the Official Gazette, direct that any of the provisions of this Act relating to assessment of total income or loss shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March,(inserted w.e.f 01/04/2021)



SECTION 143(3D)

Nothing contained in sub-section (3A) and sub-section (3B) shall apply to the assessment made under sub-section (3) or under section 144, as the case may be, on or after the 1st day of April, 2021.](***inserted w.e.f 01/04/2021***)

*Thank
you*

