

Assessment and Appeals in Income Tax

By

CMA S VENKANNA
COST ACCOUNTANT

Assessment

- Before filing ITR
 - Assessment by the Tax Payer
 - Self Assessment – Sec.140A
 - tax is collected by the government by way of [advance tax](#), [tax deducted at source](#), etc. self assessment tax is another way of collecting income tax by the government.
- Every person, before submitting a Return of Income under:
 - Is under an obligation to make a self-assessment of his income and after taking into account the amount of tax, if any, already paid, pay the self-assessment tax, if due.
- The assessee shall be liable to pay such tax together with interest and fee payable for any delay in furnishing the return or any default or delay in payment of advance tax.
- 2. Before submitting ITR, the tax payer is supposed to find out whether any tax and/or interest and/or fee is payable.

Payment of Self-Assessment Tax

- Self-assessment tax so determined shall be deposited by the assessee before submitting return of income.
- All assesseees will have to make electronic payment of tax through internet banking facility offered by authorized banks.
- Alternatively, these taxpayers can make electronic payment of tax through internet by way of credit or debit cards.
- 4. The proof of deposit should be submitted along with the return of income (i.e., BSR code of bank, Serial No. of challan, amount of deposit and date of deposit).

Procedure

- Compute the Total income as per provisions
- Compute the tax liability at the applicable rates
 - Deduct Tax Already paid through advance tax and TDS/TCS
 - Add Interest upto the date of payment
 - Pay before filing ITR (Challan 280 is to used)

After Filing – Assessment by the Department

- Assessment under section 143(1), i.e.,
 - Summary assessment without calling the assessee.
- Assessment under section 143(3),
 - Scrutiny assessment.
- Assessment under section 144,
 - Best judgment assessment.
- Assessment under section 147,
 - Income escaping assessme

Summary Assessment – Sec.143(1)

- This is a preliminary assessment and is referred to as summary assessment without calling the assessee (i.e., taxpayer).
- Scope
- total income or loss is computed after making the following adjustments namely:-
 - (i) any arithmetical error in the return; or
 - (ii) an incorrect claim (*), if such incorrect claim is apparent from any information in the return;
 - (iii) disallowance of loss claimed, if return of the previous year for which set-off of loss is claimed was furnished beyond the due date specified under section 139(1); or

- (iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return
- (v) disallowance of deduction claimed u/s 10AA, 80IA to 80-IE, if the return is furnished beyond the due date specified under section 139(1); or
- (vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return.

Time Limit

- Within 9 months from end of the assessment year in which income was first

Procedure

- After correcting arithmetical error or incorrect claim (if any) the tax and interest and fee, if any, shall be computed on the basis of the adjusted income.
- Any sum payable by or refund due to the taxpayer shall be intimated to him.
- An intimation shall be prepared or generated and sent to the taxpayer specifying the sum determined to be payable by, or the amount of refund due to the taxpayer.
- An intimation shall also be sent to the taxpayer in a case where the loss declared
- in the return of income by the taxpayer is adjusted but no tax or interest is payable by or no refund is due to him.
- The acknowledgement of the return of income shall be deemed to be the intimation in a case where no sum is payable by or refundable to the assessee or where no adjustment is made to the returned income.
- **Time-limit**
- Assessment under section 143(1) can be made within a period of 9 months from the end of the financial year in which the return of income is filed.

Scrutiny Assessment – Sec.143(3) – regular assessment

- 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.
- the Assessing Officer carries out a detailed scrutiny of the return of income and will satisfy himself regarding various claims, deductions, etc., made by the taxpayer in the return of income.

Procedure – by AO

- serve 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.
- 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

Best Judgement Assessment – Sec.144

- Assessing Officer on the basis of all relevant material he has gathered. This assessment is carried out in cases where the taxpayer fails to comply with the requirements specified in section 144.

Procedure

- If the conditions for best judgment are satisfied, then the Assessing Officer will serve a notice on the taxpayer to show cause why the assessment should not be completed to the best of his judgment.
- No notice as given above is required in a case where a notice under section 142(1) has been issued prior to the making of an assessment under section 144.
- If the Assessing Officer is not satisfied by the arguments of the taxpayer and he has reason to believe that the case demands a best judgment, then he will proceed to carry out the assessment to the best of his knowledge.
- If the criteria of the best judgment assessment are satisfied, then after taking into account all relevant materials which the Assessing Officer has gathered, and after giving the taxpayer an opportunity of being heard, the Assessing Officer shall make the assessment of the total income or loss to the best of his knowledge/judgment and determine the sum payable by the taxpayer on the basis of such assessment.

Income Escaping Assessment (Sec.147)

- If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment, he may assess/reassess such income. For this purpose, a notice shall be issued under section 148.
- Once an assessment has been reopened, any other income which has escaped assessment and which comes to the notice of the Assessing Officer subsequently in the course of the proceeding under section 147, can also be included in the assessment.

Conditions

- The Assessing Officer must have reason to believe that income or profits or gains chargeable to income-tax had escaped assessment.
- Such an escapement had occurred by reason of either omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year.

Cases of escaping income – Sec.147

- where no return of income has been furnished by the assessee and no assessment has been made although:
 - total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income tax;
- Return filed but
 - has claimed excessive loss, deduction, allowance or relief in the return;
 - income chargeable to tax has been under-assessed; or
 - income chargeable to tax has been assessed at too low a rate; or
 - income chargeable to tax has been made the subject of excessive relief under the Income-tax Act; or
 - excessive loss or depreciation allowance or any other allowance under the Income-tax Act has been computed.
- - where a person is found to have any asset (including financial interest in any entity) located outside India.
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Faceless Assessment

- **The Scheme is one of the biggest Direct Tax reforms in India based on Key Principles of Efficiency, Transparency and Accountability.**
- Features
 - Data driven selection of cases for scrutiny using data analytics and Artificial Intelligence.
 - > Abolition of territorial jurisdiction. Return of a taxpayer belonging to one city would be scrutinized anonymously by AOs based in other city
 - > **Automated random allocation of cases** to Assessment Units through computer.
 - > Centralised issue of notices using unique **Document Identification Number (DIN)** through electronic modes.
 - > **No human interface** and no need to visit the Income Tax Office.
 - > All Response to be submitted electronically.
 - > Team-based assessments and team-based review.
 - > Functional Specialisation for specific parts of assessment by different specialized units.

Applicability

- The faceless assessment scheme applied only to scrutiny assessment and best judgment assessment.
- However, as per the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Bill, 2020, Faceless Assessment will now bring other provisions of the Income Tax Act, 1961 under its purview.
- lays down the procedure to carry out a faceless assessment through electronic mode.
- All communications between the National e-Assessment Centre and the taxpayer, or his authorised representative, shall be exchanged exclusively by electronic mode; and
- All internal communications between the National e-Assessment Centre, Regional e-Assessment Centres and various units shall be exchanged exclusively by electronic mode. However, the electronic exchange of communication is not applicable where the verification unit approves a personal hearing.

- Only a **single point of faceless contact** between the taxpayer and the Department.
- > Adverse Draft Assessment Order shall be provided to taxpayer for response before finalization of the assessment order.
- > **Dynamic Jurisdiction** : Draft assessment order in one city, review in another city and finalisation in a third city.
- > Ease of tax compliance through uniformity in application of law

Appeals

- **After the Assessment Order**

(passed u/s 143(3), 144, 153A, 147 etc)

First Appeal Commissioner

(Filed u/s 246A electronically in form 35 within 30 days of order passed)

Second Appeal Appellate Tribunal

(Filed u/s 253 in form 36 within 60 days of order passed by CIT (appeals)

Third Appeal High Court u/s 260A

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Final Appeal Supreme Court u/s 261

Appeal to Commissioner of Appeals

- If any demand is raised by the Assessing Officer in the assessment,
- the next step for Assessee.
- Aggrieved tax payer can file appeal before the Commissioner (Appeals) having, jurisdiction over the tax payer.
- Designation of the Commissioner (Appeals), with whom appeal is to be filed is also mentioned in the notice of demand issued by the Assessing Officer under section 156 of Income Tax Act.

Issues

- Order against tax payer where the tax payer denies liability to be assessed under Income Tax Act;
- Intimation issued under Section 143(1) making adjustments to the returned income ;
- Scrutiny assessment order u/s 143(3) or an ex-parte assessment .order u/s 144, to object to income determined or loss assessed or tax determined or status under which assessed,
- Re-assessment order passed after reopening the assessment u/s 147/150;
- Search assessment order u/s 153A or 158BC;
- Rectification Order u/s 154/155;
- Order u/ s 163 treating the taxpayer as agent of a nonresident;
- Order passed u/s 170(2)/(3) assessing the successor to the business in respect of income earned by the predecessor;
- Order u/s 171 recording finding about partition of Hindu undivided family(HUF);
- Order u/s 201(1)/206C(6A) deeming person responsible for deduction of tax at source as assessee in default on failure to deduct/ collect tax at source or to pay the same to the Government;
- Order determining refund u/s 237;
- Order imposing penalty under various sections

Time Limit

- Appeal is to be filed within 30 days of the date of service of notice of demand relating to assessment or penalty order or the date of service of order sought to be appealed against, as the case may be.
- The Commissioner (Appeals) may admit an appeal after the expiration of period of 30 days, if he is satisfied that there was sufficient cause for not presenting the appeal within the period of 30 days.
- Application for condoning the delay citing out reasons for the delay along with necessary evidences should be filed with Form No. 35 at the time of filing of appeal. Commissioner (Appeals) can condone the delay in filing the appeal in genuine cases with a view to dispense substantive justice.

ITAT

- Appeal against an order of Commissioner (Appeals) lies with the Income Tax Appellate Tribunal (ITAT). Both tax payer and the Assessing Officer can file appeal before the Appellate Tribunal. Several Benches of the Appellate Tribunal comprising judicial and accountant members have been constituted all over India.

Issues

- Order by Commissioner(Appeals) u/s 250/154/271/ 271A/272A;
- Order by Commissioner u/s 12AA on registration application by a charitable or religious trust;
- Order by the Commissioner u/s 80G(5)(vi) regarding approval of a charitable trust for donations made after 31.3.92;
- Order by Commissioner u/s 263 revising Assessing Officer's order considered prejudicial to the interest of revenue;
- Order by Commissioner u/s 154 to rectify an order u/s 263;
- Penalty order passed by Commissioners u/s 271 or section 272A;
- Penalty order passed by Chief Commissioner/ Director General/Director u/s 272A;
- Order passed by Assessing Officer u/s 143(3)/147 in pursuance of direction of Dispute;
- Resolution Panel (DRP) and rectification order passed u/s 154 in respect of such order. The Commissioner can also direct the Assessing Officer to file appeal against order of Commissioner (Appeals) before the Appellate Tribunal.

Time Limit

- Appeal is to be filed before the Appellate Tribunal within 60 days of the date on which order appealed against is communicated to the taxpayer or the Commissioner, as the case may be.
- Circular dated 25th May 2021 Time Limit is extended in all cases
- By CBDT

Appeal to High Court

- Appeal against Appellate Tribunal's order lies with the High Court, Where the High Court is satisfied that the case involves a substantial question of law.
- Appeal to the High Court against Appellate Tribunal's order can be filed by the tax payer or the Chief Commissioner/Commissioner within 120 days of receipt of the order and in the form of memorandum of appeal, precisely stating the substantial question of law involved.
- If the High Court is satisfied that a substantial question is involved, it would formulate that question.
- High Court hears the appeal only on the question of law so formulated; however, the respondents can argue at the time of hearing that case does not involve such question of law.
- Appeal filed before High Court is heard by bench of not less than two Judges and decision is by majority.

Appeal to SC

- Appeal against High Court's order in respect of Appellate Tribunal's order lies with the Supreme Court in those cases, which are certified to be fit one for appeal to the Supreme Court.
- Special leave can also be granted by the Supreme Court under Art. 136 of the constitution of India against the order of the High Court.

Appeal

- An appeal shall lie to the Supreme Court from any judgment of the High Court delivered before the establishment of the National Tax Tribunal] on a reference made under section 256 against an order made under section 254 before the 1st day of October, 1998 or an appeal made to High Court in respect of an order passed under section 254 on or after that date in any case which the High Court certifies to be a fit one for appeal to the Supreme Court.

Hearing

- **Hearing before the Supreme Court**
- • The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 261 as they apply in the case of appeals from decrees of a High Court :
- **Provided** that nothing in this section shall be deemed to affect the provisions of sub-section (1) of section 260 or section 265.
- • The costs of the appeal shall be in the discretion of the Supreme Court.
- • Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 260 in the case of a judgment of the High Court.

Thank You