# New claims, taking of additional grounds & production of evidences before Appellate Authority undet IT Act, 1961

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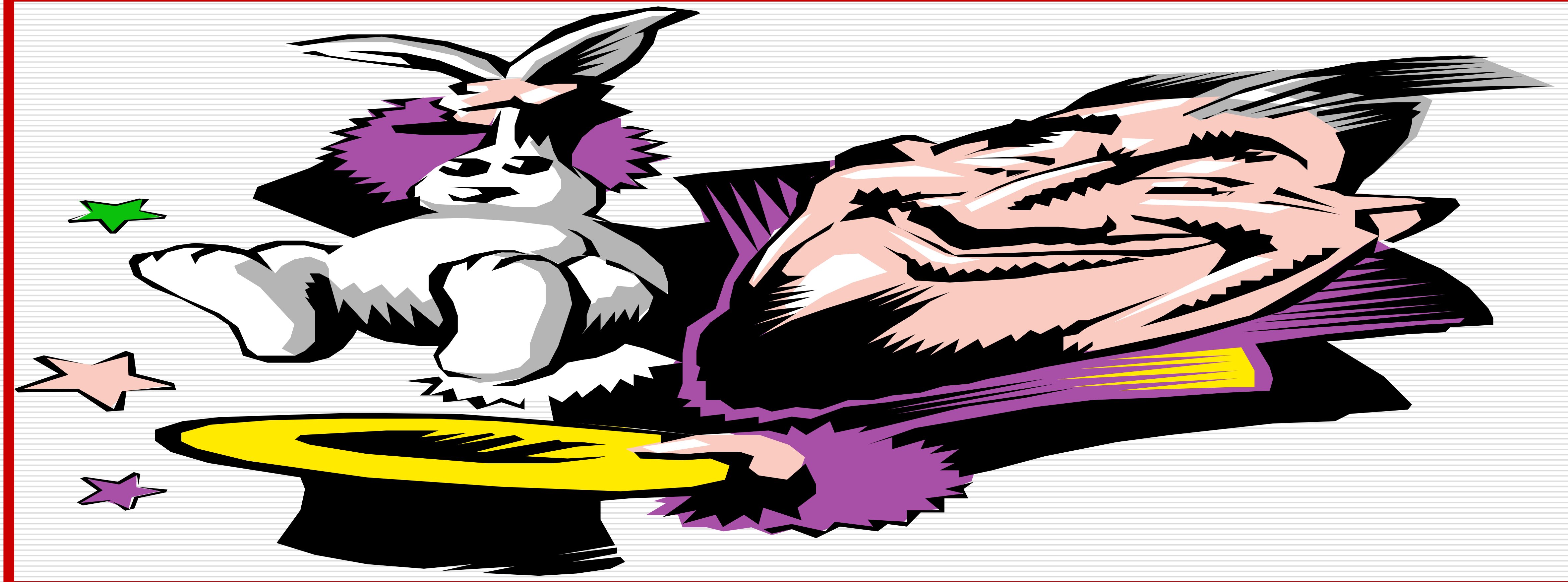


# What is Assessment Procedure ?

- Every Person, who is earning, which is chargeable to tax, has to furnish his return of income to the Income Tax Department. ... The process of examination of the return by the Income Tax Department .
- Is called "Assessment"

- 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


How Much did you earn ?


File your ROI


Checking your ITR by Dept

# Various Sections under which ITR is filled


- 139 (1) - Normal Return
- 139 (3) – Return of Loss
- 139 (4) – Belated Return
- 139 (5) – Revised Return

**Rectification of Defect in Return–U/S 139(9)**

- 142(1) – Directions by AO to file the ROI
- 148 – Re-assessment of Income U/s 147
- 153 A/C – Block Assessment in case of Action U/s 132/ From 1.04.2021 will covered u/s 147 `

# Who can file return of income

- Section 139(1) requires that every person,—
  - being a company or a firm; or
  - being a person other than a company or a firm, if (i) his total income or (ii) the total income of any other person in respect of which he is assessable under the Income-tax Act, during the previous year, exceeded the maximum amount which is not chargeable to income-tax.

shall, furnish a return of his income or the income of such other person.

# Who can file return of Income

| *Section* | *Different Situations* |
|---|---|
| **139(1)(a)** | **A company/firm is required to submit its return of income (regardless of the quantum of income or loss).** |
| **139(1)(b)** | **A person (other than an individual/ HUF/company/firm) is required to submit his/its return of income, if income exceeds exemption limit.** |
| **139(1)(b), read with fifth proviso** | **Individual/HUF is required to submit his/its return of income, if income [without claiming deduction under sections 10A, 10B, 10BA, 80C to 80U and under section 10(38)] exceeds the amount of exemption limitt.** |

# Who can file return of Income

| Section | Different Situations |
|---|---|
| ▪ 139(4A) | A person in receipt of income derived from property held under a trust for charitable or religious purposes is required to submit return of income if its income (without giving exemption under section 11 or 12) exceeds exemption Limit. |
| 139(4B) | Chief executive officer of every political party is required to submit income-tax return if income of the political party (without giving exemption under section 13A) exceeds exemption limit. |
| 139(4C) | If total income (without claiming any exemption given below) of the assessee (who is qualified to claim exemption under section 10 / 23) exceeds the exemption limit - |
| 139(4D) | Any university/college/other institution referred to in section 35(1)(ii)/ (iii) is required to submit return of income (return has to be submitted whether there is income or loss. Such return has to be submitted even if it is not required by any other provision) |
| 139(4E)/(4F) | These sub-sections cover submission of return by business trust/investment fund. |

# Sources of Income in case Company

**Meaning of "beneficial owner" and "beneficiary" in respect of an asset for the purpose of section 139:**

| | |
|---|---|
| **Beneficial Owner** | An individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person. |
| **Beneficiary** | An individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person, other than such beneficiary. |

## Requirement of filing of return of income as per the fourth and fifth proviso to section 139(1)

A resident other than not ordinarily resident within the meaning of section 6(6)

Who is not required to furnish a return of income u/s 139/(1)

AND

Who at any time during the P.Y.

A

holds, as beneficial owner or otherwise, any asset (including financial interest in any entity) located outside

OR

has a signing authority in any account located outside India

B

is a beneficiary of any asset (including financial interest in any entity) located outside India

However, where any income arising from such asset is includible in the hands of the person specified in (A) in accordance with the provisions of the Act, an individual, being a beneficiary of such asset, is not required to file return of income.

# Mandatory Filing of return – 139(4C)

| | Institution/Association etc. | Applicable section |
|---|---|---|
| (a) | Research association | 10(21) |
| (b) | News agency | 10(22B) |
| (c) | Association or institution | 10(23A) |
| (d) | Fund for the welfare of employees or their dependents | 10(23AAA) |
| (e) | Institution | 10(23B) |
| (f) | Fund or institution | 10(23C)(iv) |
| (g) | Trust or institution | 10(23C)(v) |
| (h) | University or other educational institution | 10(23C)(vi)/(iiiad) |
| (i) | Hospital or other medical institution | 10(23C)(via)/(iiiae) |
| (j) | Mutual Fund | 10(23D) |
| (k) | Securitisation Trust | 10(23DA) |
| (l) | Investor Protection Fund | 10(23EC)/(ED) |
| (m) | Core Settlement Guarantee Fund | 10(23EE) |
| (n) | Venture Capital Company/Venture Capital Fund | 10(23FB) |
| (o) | Trade Union | 10(24)(b) |
| (p) | Board or Authority as referred | 10(29A) |
| (q) | Body or Authority or Board or Trust | 10(46) |
| (r) | Infrastructure Debt Fund | 10(47) |

# Mandatory filing of return in certain cases

**With effect from Assessment Year 2020-21,**

- Every person, who is not required to furnish return of income under any other provision of section 139(1), to file return of income if during the previous year he:
- 1. Has deposited an amount (or aggregate of amount) in excess of Rs. 1 crore in one or more current account maintained with a bank or a co-operative bank.
- 2. Has incurred aggregate expenditure in excess of Rs. 2 lakh for himself or any other person for travel to a foreign country.
- 3. Has incurred aggregate expenditure in excess of Rs. 1 lakh towards payment of electricity bill.
- 4. Fulfils such other conditions as may be prescribed.

| ITR Forms | Subject |
|---|---|
| IT.R-1 (i.e, SAHAJ) | For an individual who is resident and ordinarily resident (total income does not exceed Rs. 50 lakh) having income from salary/one house property (not being brought forward loss or loss to be carried forward)/income from other sources (not being loss and not being winning from lottery/income from race horses) |
| ITR-2 | For an individual/HUF where the total income does not include income under the head business or profession |
| ITR-3 | For an mdividual/HUF having income under the head business or profession |
| ITR-4 - SUGAM | For an individual/HUF/firm (other than LLP) deriving business income and such income is cornputed in accordance with special provisions referred to in section 44AD, 44ADA or 44AE |
| ITR-5 | For firms, AOPs and BOIs or any other person (not being individual or HUF or company or to whom ITR-7 is applicable) |
| ITR-6 | For companies other than companies claiming exemption under section 11 |
| ITR-7 | For persons including companies required to furnish return under section 139(4A)/(4B)/(4C)/(4D) |
| ITR-V | Where the data of the return of income in Forms ITR-1, ITR-2, ITR-3, ITR-4 and ITR-5 transmitted electronically without digital signature |

# Revised Return of Income – 139(5) / Defective Return – 139(9)

- If an assessee discovers any omission or wrong statement (bonafide in nature) in the return filed, he can revise his return
  Time limit: Assessee may file the revised return -
- • before the end of the relevant assessment year; or • before completion of regular assessment, - whichever is earlier.
- Notes :
- (a) Replacement of original return: Once a revised return is filed, it replaces the earlier return. b) Revision of revised return: A revised return can again be revised
- (c) Revision of belated return: A belated return u/s 139(4) can be revised.
- (d) Revision of loss return: A loss return can be revised
- (e) Return filed pursuant to notice u/s 142(1) cannot be revised.

- When a return is termed defective U/S 139(9)
- • The return is furnished without paying self-assessment tax along with interest, if any.
- • The annexure, statements and columns in the return of income have been duly filled in.
- • The return is *accompanied by* the different documents

**Assessee / Tax Payer**

**IT - DEPARTMENT**

## Various Sections of Assessment under Income Tax Act

- 140 (A) - Self Assessment
- 143 (1)- Summary Assessment
- 143 (3) - Regular Assessment
  - Limited Scrutiny
  - Complete Scrutiny
- 144 – Best Judgement
- 147 - Re- Assessment
- 153 (A)/(C) Block Assessment / From 01/04/2021 u/s 147

# Procedure for Assessment Proceedings under section 143(3)

Mandatory issue and service of Notice U/s 143(2)

Section 133 - Power of AO to call information from any person for completing the assessment

Issue of Notice U/s 142(1) (ii) calling for information required to complete the assessment

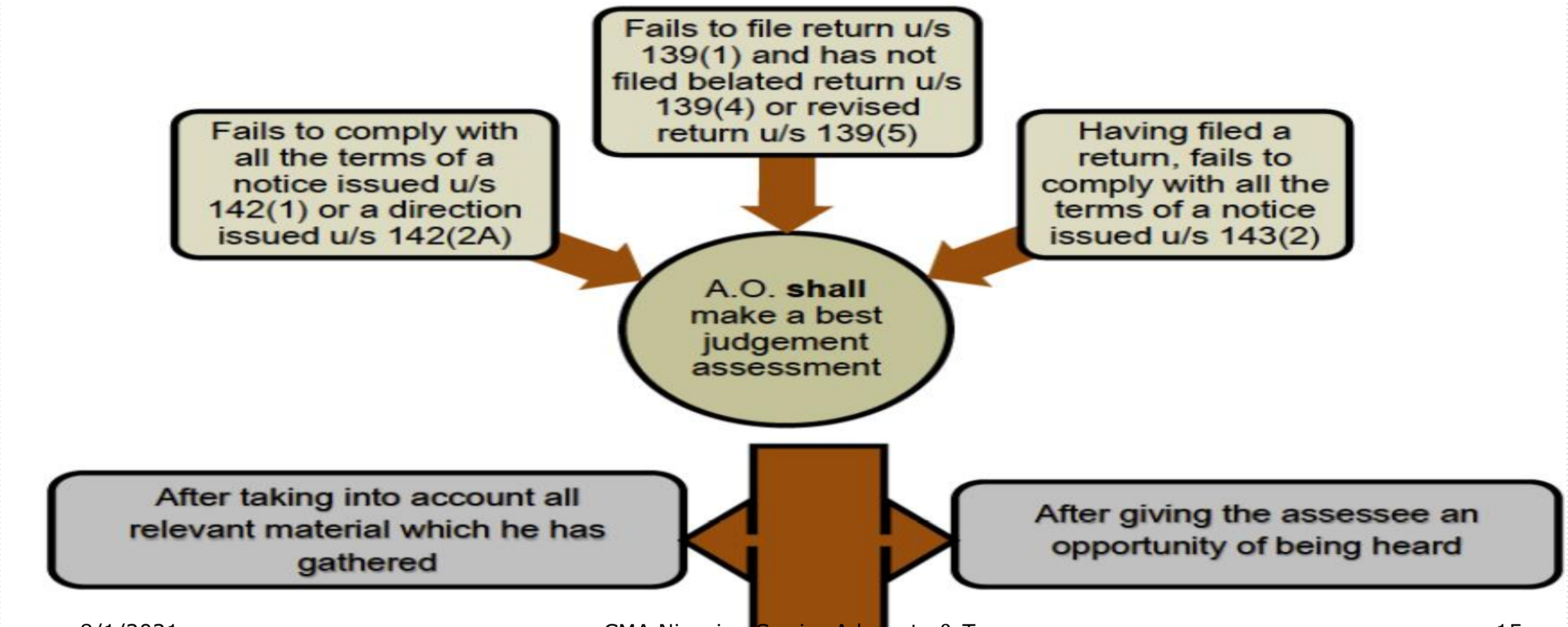
Referral to Valuation Officer (142A) or Direction for audit u/s. 142(2A)if required

Issue of Show cause notice if AO intends to make certain additions/disallowance to the income of the Assessee

Issue of Assessment order U/s 143(3) within time limit prescribed U/s 153(1)

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

# Best Judgment Assessment U/s. 144



# Procedure for Assessment Proceedings U/s. 147

Assessing Officer should have 'Reason to Believe' and record it to assess or re-assess the income escaping assessment

Issue of notice under section 148 for income escaping assessment within the time limit

Time Limit for issue of notice under section 148 is specified under section 149

Assessee is required to file return of income in pursuance to notice under section 148

Assessee should seek for the reasons recorded by the Assessing Officer

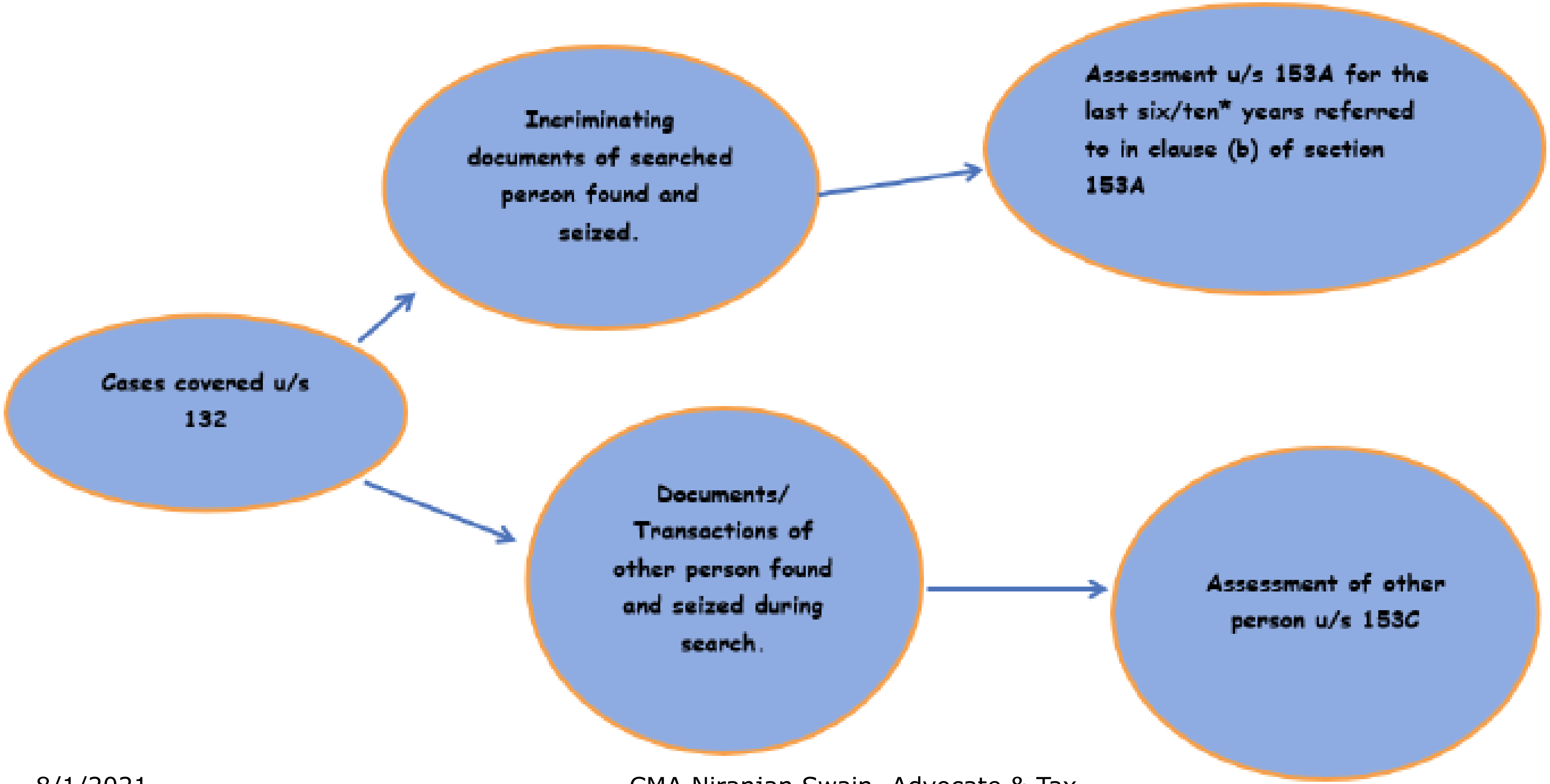
Assessing officer should issue notice under section 143(2)

**Assessing Officer Should issue notice under section 142(1)(ii)**

**Assessing Officer Should complete and pass the final assessment order under section 147 r. w. s. 143(3) within the time limit**

**Time limit for passing the assessment order is specified under section 153 (1) i.e within 12 months from the end of the Financial year in which notice U/s 148 was issued**

# Search Assessments



## Assessment in case of Search and Seizure :-
## (Sec 153A to 153C) Also known as ‘Block Assessment’


Procedure of Assessment under Section 153A

Search is initiated under section 132

Books of accounts, any document or any asset requisitioned under section 132A

YES

Issue of notice under section 153A(1) for filling of Return of Income for 6 Assessment years

Assessee is require to file Return of Income for relevant assessment year and 6 previous assessment year as if return is under section 139(1) – Return to be filed U/s 153A

Assess or Reassess the total income of relevant assessment year and 6 previous assessment years after filling Return of Income

Tax is calculated at the rate applicable for the respective assessment year

U/s 153A -No notice for assessment or reassessment if income escaped likely to amount to be less than Rs. 50 Lakhs in relevant AY or in aggregate.

153A – All the proceeding of Assessment or Re-assement (relating to 6 AY) as on the date of initiating 132 shall abate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# Assessment under Search – New Section 147

- In search, survey or requisition cases initiated or made or conducted, on or after 1st April, 2021,

- it shall be deemed that the AO has information

- which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the AY relevant to the PY year in which the search is initiated or requisition is made or any material is seized or requisitioned or survey is conducted.

# Assessment under Search – New Section 147
# Process laid down u/s 148A not applicable

- Section 148A of the Act proposes that before issuance of notice the AO shall
- conduct enquiries,
- if required, and provide an opportunity of being heard to the assessee.
- after considering his reply, the AO shall decide, by passing an order, whether it is a fit case for issue of notice u/s 148 and serve a copy of such order along with such notice on the assessee. The Assessing Officer shall before conducting any such enquiries or providing opportunity to the assessee or passing such order obtain the approval of specified authority.
- However, this procedure of enquiry, providing opportunity and passing order, before issuing notice under section 148 of the Act, shall not be applicable in search or requisition cases.

# Assessment under Search

- The time limitation for issuance of notice u/s 148 is proposed to be provided in section 149 of the Act and is as below:
- in normal cases:
  - no notice shall be issued if 3 have elapsed from the end of relevant AY. Notice beyond the period of 3 from the end of relevant AY can be taken only in a few specific cases.
- in specific cases:
  - where the AO has in his possession evidence which reveal that the income escaping assessment, represented in the form of asset, amounts to or is likely to amount to Rs.50 lakhs or more, notice can be issued beyond the period of three year but not beyond the period of 10 years from the end of the relevant AY.

Example:For Serious Tax Evasion cases, where evidence of concealment of Income is more than Rs. 50 Lacs, notice can be issued beyond 3 years but not beyond 10 years.)

# Assessment of Income under Search / requisition-

- Notice u/s 148 of the Act cannot be issued at any time in a case for the relevant AY beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under the provisions of clause (b), as they stood immediately before the proposed amendment.

- Since the assessment or reassessment or re-computation in search or requisition cases (where such search or requisition is initiated or made on or before 31st March 2021) are to be carried out as per the provision of section 153A, 153B, 153Cand 153D of the Act, the aforesaid time limitation shall not apply to such cases.

## Search imitiated / conducted before 31st March 2021

## How to Compute Period of Limitation for issue of Notice:

- **Where search or requisition is initiated or made on or before 31st March 2021:**
  - **the assessment or reassessment or re-computation shall be continued as per the existing provision of Section 153A, 153B, 153C and 153D, and the aforesaid time limitation shall not apply to such cases.**
- **Clarification : Notice under new section 148 cannot be issued at any time in a case for the relevant AY beginning on or before 1st day of April 2021, if such notice could not have been issued at that time on account of being beyond the time limit of 6 years.**

# Assessment under Search

- For the purposes of computing the period of limitation for issue of section 148 notice,

  - the time or extended time allowed to the assessee in providing opportunity of being heard or
  - period during which such proceedings before issuance of notice under section 148 are stayed by an order or injunction of any court,

  shall be excluded.

- If after excluding such period, time available to the AO for passing order, about fitness of a case for issue of 148 notice, is less than seven days, the remaining time shall be extended to seven days.

## TIME LIMIT FOR COMPLETION OF RE-ASSESSMENT PROCEEDINGS [SECTION 153]

| Income escaping assessment belongs to the Assessment year | Time limits if notice can be issued up to 3 years | | Time limits if notice can be issued up to 10 years | |
|---|---|---|---|---|
| | Last date to issue notice | Last date to pass the order | Last date to issue notice | Last date to pass the order |
| | | | | |
| 2021-22 | 31-Mar-25 | 31-Mar-26 | 31-Mar-32 | 31-Mar-33 |
| 2020-21 | 31-Mar-24 | 31-Mar-25 | 31-Mar-31 | 31-Mar-32 |
| 2019-20 | 31-Mar-23 | 31-Mar-24 | 31-Mar-30 | 31-Mar-31 |
| 2018-19 | 31-Mar-22 | 31-Mar-23 | 31-Mar-29 | 31-Mar-30 |
| 2017-18* | - | - | 31-Mar-28 | 31-Mar-29 |

# PRIOR APPROVAL OF SPECIFIED AUTHORITIES [SECTION 151]

| *Time Limit* | *Specified Authority* |
|---|---|
| **If 3 years or less than 3 years have elapsed from the end of the relevant assessment year** | **Principal Commissioner of Income-tax (PCIT) or Principal Director of Income-tax (PDIT) or Commissioner of Income-tax (CIT) or Director of Income-tax (DIT)** |
| **If more than 3 years have elapsed from the end of the relevant assessment year** | **PCIT or PDIT, or where there is no PCIT or PDIT, CCIT or DGIT** |

# Assessment under Search

- Once assessment or reassessment or re-computation has started the Assessing officer is proposed to be empowered (as at present) to assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceeding under this procedure notwithstanding that the procedure prescribed in section 148A was not followed before issuing such notice for such income.

# New Claim - Background

**Reason of New Claim – as not claimed in the return of Income:**

- Inability to file revised returns as Original returns weren't file within due date
- Expiry of Due-date for filing revised returns
- Fail to claim / short claim certain deductions/exemptions
- Subsequent Retrospective amendments
- Subsequent Judicial pronouncements delivered
- Cases where Rectification / Revision of orders aren't made / cannot be made.

# New Claim - Background

**Indian Constitution**

- **Article 265 of the Constitution of India lays down that no tax shall be levied except by authority of law. Hence only legitimate tax can be recovered and even a concession by a tax-payer does not give authority to the tax collector to recover more than what is due from him under the law.**

**Extract of Article 265 of Constitution of India**

- **"265. Taxes not to be imposed save by authority of law No tax shall be levied or collected except by authority of law"**

# New Claim - Background

CBDT Circular on Assessee's Rights : Circular No:14 (XL-35) dated April 11, 1955.

- "Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assessee on whom it is imposed by law, officers should

- (a) Draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;
- (b) Freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs."

# New Claim - Background

- CBDT Circular No: 14 (XL-35) dated April 11, 1955 - Judicially noted and approved in many judgments and has been relied upon in support of the Assessees claim.

- Supreme Court: New Claims need not be accepted by Assessing Officers when made by Assessees through a Letter, if same is not claimed in return filed under section 139

- Goetze (India) Ltd. v. CIT [TS-21-SC-2006-O] judgment dated 24-3-2006

## Goetze (India) Ltd. v. CIT [TS-21-SC-2006-O] judgment dated 24-3-2006

❖ The assessee filed its return of income on 30-11-1195 for A.Y. 1995-96. During assessment proceedings it sought to claim a deduction by way of a letter dated 12-1-1988. The deduction was disallowed by the Assessing Officer on the ground that there was no provision under the Income-tax Act to make amendment in the return of income otherwise than by revising the return.

❖ In appeal before the CIT (A), the Assessees claim was allowed. However the ITAT allowed Departments' appeal against the order by CIT (A). The assessee in appeal before the Supreme Court relied upon the Apex Court' decision in National Thermal Power Co. Ltd. v. CIT [TS-18-SC-1996-O] to contend that it was open to assessee to raise the points of law even before the Tribunal.

❖ The Apex Court held that the claim of deduction not made in the return cannot be entertained by the assessing officer otherwise than by filing a revised return. The court also held that the decision does not impinge upon the powers of the Tribunal under section 254 of the Act.

❖ This judgment in Goetze's' case is generally relied upon by the Assessing Officers, ignoring Article 265 of the Indian Constitution and CBDT Circular No. 14(XL-35) cited above in dis-allowing deductions / claims made by the Assesses for the first time.

## Distinction between a Fresh Claim and Revised Claim

### No Fresh Claim:

- Where necessary evidence in respect of a claim is already on record but the Section / mode / method / Quantum of deduction needs revision due to various factors, such claims through letter shall to be accepted by the Assessing Officers.

- In such cases there is already a claim by the assessee and there being no fresh claim the judgment in Goetze's case, with due respect shall not be applicable.

## Distinction between a Fresh Claim and Revised Claim Allahabad High Court in CIT v. Dhampur Sugar Ltd. [TS-5083-HC-1972(ALLAHABAD)-O] held that:

- "There is distinction between a revised return and a correction of return. If the assessee files some application for correcting a return already filed or making amends therein, it would not mean that he has filed a revised return. It will retain the character of an original return. But once the revised return is filed, the original return must be taken to have been withdrawn and to have been substituted by a fresh return for the purpose of assessment."

- The assessee had asked for re-computation of deduction under section 80-IB. Relying on Goetze (India) Ltd. (supra) the Revenue rejected the claim. As the assessee had not made any new claim the court held that the said decision may not be squarely applicable.
- It held that the Courts have taken a pragmatic view and not the technical view as what is required to be determined is the taxable income of the assessee in accordance with the law. In this sense, assessment proceedings are not adversarial in nature.

## Distinction between a Fresh Claim and Revised Claim

**[CIT v. Natraj Stationery Products (P) Ltd., [TS-121-HC-2008(DEL)-O]**

- Since claim of depreciation at a higher rate, as made before the Assessing Officer is not at all a new claim, as held in **'JCIT vs. Hero Honda Finlease Ltd.' [TS-5186-ITAT-2008(DELHI)-O],** whereas 'Goetze (India) Ltd.' is with regard to only a new claim made in the assessment and not concerning modification of claim;

# Distinction between a Fresh Claim and Revised Claim [Solaris Bio Chemicals Limited, Vs. DCIT, [TS-5929-ITAT-2012(DELHI)-O]

HC dismisses Revenue's appeal, allows Sec 10A deduction on the basis of revised computation of income filed by assessee during assessment proceedings; Notes that pursuant to revised computation, loss shown for Sec 10A unit was revised at an income upon correcting error made in classifying revenues pertaining to Sec 10A and non-10A units, however AO refused to take cognizance of the revised computation in absence of a revised return filed by assessee relying on SC ruling in Goetze (India) Ltd.;

- Relies on co-ordinate bench rulings in
  - Western India Shipyard Limited,
  - Sam Global Securities Ltd.,
  - Influence and Jai Parabolic Springs Ltd.
- Bombay HC ruling in
  - Pruthvi Brokers & Share holders (P) Ltd. to hold that SC ruling in Goetze (India) "would not apply if the Assessee had not made a new claim but had asked for recomputation of the deduction";


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# Power of the CIT – Appeals / ITAT

## Commissioner of Income Tax v. Jai Parabolic Springs Ltd. [TS-5472-HC-2008(DELHI)-O]

- "17. In Goetze (India) Limited v. Commissioner of Income Tax [TS-21-SC-2006-O] wherein deduction claimed by way of a letter before Assessing Officer, was disallowed on the ground that there was no provision under the Act to make amendment in the return without filing a revised return. Appeal to the Supreme Court, as the decision was upheld by the Tribunal and the High Court, was dismissed making clear that the decision was limited to the power of assessing authority to entertain claim for deduction otherwise than by revised return, and did not impinge on the power of Tribunal."

# Power of the CIT – Appeals / ITAT

## CIT v. Ramco International [TS-132-HC-2008(P & H)-O]

- The assessee did not make a claim for deduction u/s. 80IB in the return. The assessee however filed Form 80CCB and other relevant documents during assessment proceedings. The claim was disallowed by the assessing officer. The CIT(A) allowed the claim. The ITAT upheld the order by CIT(A). The High Court upheld the ITAT order.

# Power of the CIT – Appeals / ITAT

## Commissioner of Income Tax v. Rose Services Apartment India P. Ltd., [TS-5186-HC-2009(DELHI)-O]

- Relying upon the decision of the Supreme Court in National Thermal Power Co. Ltd. [TS-18-SC-1996-O], the Court rejected the plea of the Revenue that the Tribunal could not have entertained the plea, holding that the tribunal was empowered to deal with the issue and was entitled to determine the claim of loss, if at all, under one section/provision or the other.

# Power of the CIT – Appeals / ITAT

## CIT v. Pruthvi Brokers & Shareholders Pvt. Ltd. – [TS-463-HC-2012(BOM)-O]

- It is well settled that an assessee is entitled to raise not merely additional legal submissions before the appellate authorities, but is also entitled to raise additional claims before them. The appellate authorities have the discretion whether or not to permit such additional claims to be raised. It cannot, however, be said that they have no jurisdiction to consider the same.

# Power of the CIT – Appeals / ITAT

**Chicago Pneumatic India Ltd. v. Deputy Commissioner of Income Tax [TS-5164-ITAT-2007(MUMBAI)-O]**

- It has been held that even though the assessee did not revise its claim under sections 80HH and 80-I, in the revised return, the IT authorities were obliged to consider the revised figures placed before them during assessment.

**Thomas Kurian v. Assistant Commissioner of Income Tax [TS-5350-ITAT-2006(COCHIN)-O]**

- AO being a quasi-judicial authority, once having noted in the assessment order that assessee had export turnover, was duty bound to ask the assessee as to why he had not claimed deduction under section 80HHC. The matter was remanded to the AO to decide Assessees claim for deduction under section 80HHC.

# Distinction between a Fresh Claim and Revised Claim

## CIT v. Rose Services Apartment India (P) Ltd [TS-5186-HC-2009(DELHI)-O]

- Relying upon the decision of the Supreme Court in National Thermal Power Co. Ltd. (supra),a Division Bench of this Court rejected the plea of the Revenue that the tribunal could not have entertained the plea, holding that the tribunal was empowered to deal with the issue and was entitled to determine the claim of loss, if at all, under one section / provision or the other.

# Distinction between a Fresh Claim and Revised Claim

## CIT v. Jindal Saw Pipes Ltd [TS-5642-HC-2010(DELHI)-O]

- **Decision in Goetze (India) Ltd. (supra) was again relied upon by the Revenue in CIT v. Jindal Saw Pipes Ltd [TS-5642-HC-2010(DELHI)-O] but the contention was not accepted, observing that the tribunal's jurisdiction is comprehensive and as simulates issues in the appeal from the order of the CIT (Appeals) and the tribunal has the discretion to allow a new ground to be raised.**

# Distinction between a Fresh Claim and Revised Claim

**CIT vs. Jai Parabolic Springs Ltd." [TS-5472-HC-2008(DELHI)-O],**

- It was held that the CIT (A) had the jurisdiction to entertain the additional claim not filed before the Assessing Officer.

**CIT vs. Lucknow Public Educational Society", [TS-5024-HC-2009(ALLAHABAD)-O]**

- The original return had been filed late, due to which, the revised return was treated by the Assessing Officer as a nonest, it was held that a claim to which the assessee is legally entitled cannot be denied by the Assessing Officer on technical grounds, even if such a claim has not been made by the assessee.

## Distinction between a Fresh Claim and Revised Claim

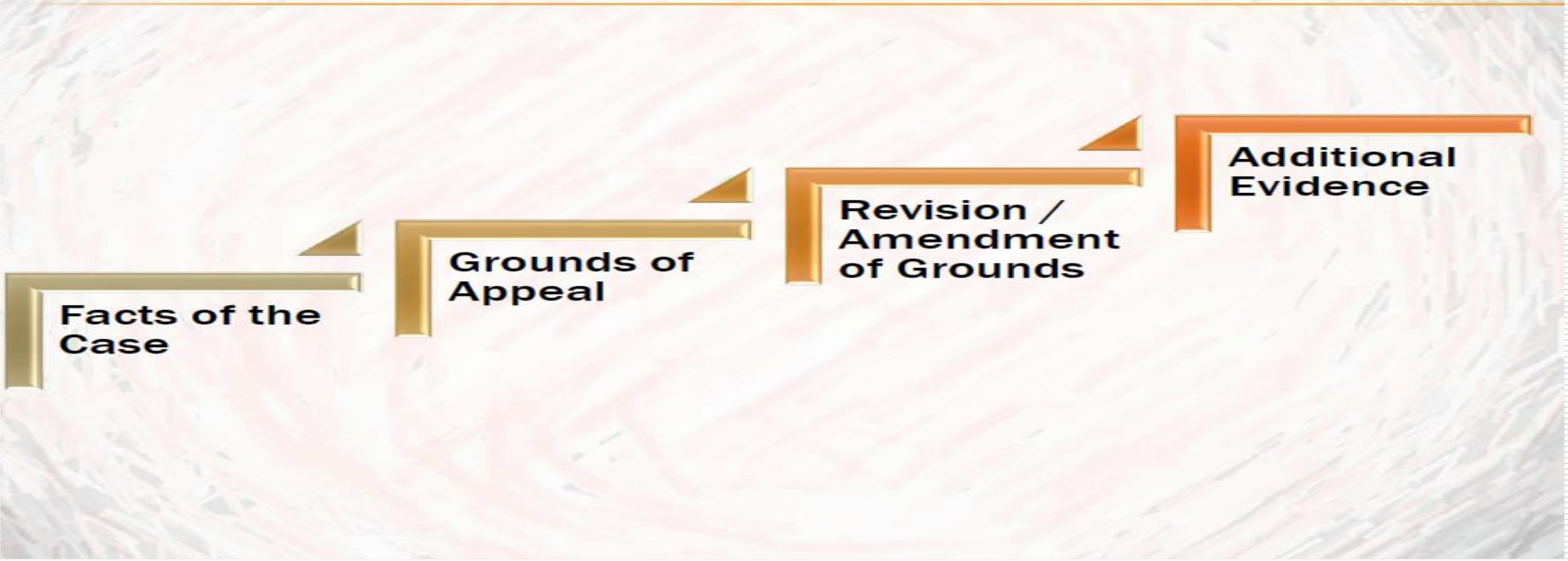
**Rachhpal Singh vs. Income-tax Officer" [TS-5088-ITAT-2005(Amritsar)-O]**

- The assessee withdrew its claim before the Assessing Officer considering that it was not entitled to such claim. Subsequently, the assessee made that very claim before the appellate authority, which was accepted.

**Deepak Nitrite Ltd. vs. CIT", [TS-5560-HC-2008(GUJARAT)-O]**

- In the original return deduction was claimed u/s 32A of the Act, whereas in the belated revised return, such claim was rectified and made u/s 32AB, which claim was accepted.

# Making New Claim / Additional Ground / Additional Evidence – Provisions & Proceedures



# RELATED PROVISIONS

| | |
|---|---|
| S. 250(5) | • Ground of Appeal Revision |
| S. 251 Expl | • Powers of CIT(A) |
| R. 46A | • Additional Evidence |



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## AMENDMENT / REVISION OF GROUNDS

- Can it be done?
- Is it a New Ground or Amendment of Existing Ground?
- S. 250(5) - CIT (A) may, at hearing of an appeal, allow appellant to go into any ground of appeal not specified in grounds of appeal, if he is satisfied that omission of that ground from Form of appeal was not:
  - wilful or
  - unreasonable.

## AMENDMENT / REVISION OF GROUNDS

- Explanation to S. 251 - In disposing of an appeal, the CIT (A) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the CIT (A) by the appellant

## JUDICIAL PRONOUNCEMENTS

- *Madras High Court in M/s Ramco Cements Ltd. vs. DCIT Tax case Appeal No. 916/2014* - It is to be noted herein that the Act does not contain any express provision preventing the assessee from raising new grounds in appeal and there is no provision in the act restricting the Appellate Authority to entertain such new ground in the appeal. In the absence of statutory bar, the appellate authority is vested with the power, which is co-terminus with that of original authority, to allow the assessee to raise new ground, if same is bonafide and not willful or unreasonable

## JUDICIAL PRONOUNCEMENTS

- S. 250(5) empowers CIT(A) to allow appellant to raise additional grounds of appeal if satisfied that, omission thereof was not willful or unreasonable. It is a discretionary power which is exercised based on the facts and circumstances of each case - *Jute Corporation of India Ltd. vs. CIT: 187 ITR 688 (SC)*
- Where a claim is not made in ROI, including revised ROI, although the AO is not empowered to allow such claim, the same can be raised before CIT(A) as additional grounds of appeal -

  - *Goetze India Ltd. v. CIT 284 ITR 323 (SC)*

  - *CIT v. Jai Parabolic Springs Ltd. 306 ITR 42 (Del.)*

## JUDICIAL PRONOUNCEMENTS

- If facts not on record, additional Grounds of appeal can be admitted, and matter may be set aside for verification by AO –
  - *DCM Benetton India Ltd. v. CIT: 173 Taxman 283 (Del. HC);*
  - *ONGC v. Addl. CIT: ITA No. 357 & 358/Del./2005 (Del. ITAT)*
- By when can we file the additional grounds?
- There is no time limit to file additional grounds of appeal –
  - *K.C. Khajanchi v. ITAT in C.W. No. 2164/99;*
  - *Zakir Hussain v. CIT (2006) 202 CTR (Raj.) 40;*
  - *Jindal Polyester & Steel Ltd. v. DCIT (ITA No.2521/Del/1997) (Del.Tri.)*

## JUDICIAL PRONOUNCEMENTS

- *CIT vs. Jindal Saw Pipes Ltd. (2010) 78 CCH 0717 Del HC* - Authority of the CIT is co-extensive with that of the AO. Moreover, s. 250(5) allows the assessee to raise an issue not even forming part of the grounds of appeal. CIT (A) was therefore justified in allowing revised claim of the assessee company for deduction.
- *Ramgopal Ganpatrai & Sons Ltd. vs. CIT (1953) 21 CCH 031 Mum HC* - Assessee is entitled to raise new ground which was not raised before AO, nor stated in grounds of appeal.

# [CIT VS E FUNDS INTERNATIONAL INDIA PVT LTD [TS-5509-HC-2015(DELHI)-O]

**Appellate Authorities can admit new ground or evidence either suo motu or at the invitation of the parties**

- Section 251 of the Act describes the powers of the Appellate Commissioner in such an appeal. Under Section 251(1)(a) in disposing of such an appeal the Appellate Assistant Commissioner may, in the case of an order of assessment, confirm, reduce, enhance or annul the assessment; under clause (b) thereof he may set aside the assessment and direct the Income Tax Officer to make a fresh assessment.
- Explanation to Section 251 also provides that In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, not withstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.

# [CIT VS E FUNDS INTERNATIONAL INDIA PVT LTD [TS-5509-HC-2015(DELHI)-O]

- Section 254 of the Income-tax Act, provides that the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law.

- The Judgement in Goetze's' Case makes it clear that the question addressed is limited to the power of the assessing authority and does not impinge on the power of the Income Tax Appellate Commissioner or the Tribunal under section 251 and 254 of the Income Tax Act, 1961.

# National Thermal Power Co. Ltd. vs CIT[TS-18-SC-1996-O] / 229 ITR 383 (SC):

Where on the facts found by the authorities below a question of law arises (though not raised before the authorities) which bears on the tax liability of the assessee, whether the Tribunal has jurisdiction to examine the same ?

- Under Section 254 of the Income-tax Act, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders there on as it thinks fit.
- The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms.
- The purpose of the assessment proceedings before the taxing authorities is to assess correctly the taxliability of an assessee in accordance with law….
- We do not see any reason to restrict the power of the Tribunal u/s 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals).
- Both the assessee as well as the Department has a right to file an appeal / cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier

## Jute Corporation of India Ltd. v. CIT – (1991) 187 ITR 688

- An appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions.

- In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter….

- Appellate ACIT should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. (same for ITAT)

## Jute Corporation of India Ltd. v. CIT

- ITAT have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.

- The reframed question, therefore, is answered in the affirmative, i.e., the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee. We remand the proceedings to the Tribunal for consideration of the new grounds raised by the assessee on the merits.

# WHEN TO REVISE

- When it can be / should be done?
  - Error
  - New points
  - Summarise, if earlier was detailed
  - New AR and wants additional grounds
- Ground: "*That the appellant carves leave to add, alter, modify or delete any of the ground of appeal.*"

## ADDITIONAL EVIDENCE

- CIT(A)can admit additional evidence or documents only after applying rule 46A
- Additional evidences cannot be accepted without giving a reasonable opportunity to AO to examine and rebut the said evidences
- If AO objects to admission of additional evidence, then CIT (A) should give categorical finding in terms of rule 46A for admission thereof
- Proper reasons must be given for non-acceptance of additional evidence under rule 46A
- To render justice, CIT (A) can admit new evidence
- Additional evidence must be allowed for reasonable cause

## WHEN AO REFUSE TO ADMIT AE

- It is mandatory that AO should receive the additional evidences while disposing off the remand report.
- The AO may refuse to admit the additional evidences in his remand report
- In such cases, the CIT (A) can admit the additional evidences by his own to render the justice.
- In case, AO refused or decline, It's the power of the CIT ( A) to receive and consider the same.

# ADDITIONAL EVIDENCE

- Application to be made:
  - in writing
  - in duplicate
  - with prayer for acceptance of additional document
  - along with justification
  - specifically mention the sub rule of Rule 46 A in which these paper are being filed.

# ADDITIONAL EVIDENCE

- CIT (A) shall not take into account any additional evidence unless the AO has been allowed a reasonable opportunity:
  - to examine the evidence or document or to cross-examine witness produced by appellant
  - to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant

# SUO-MOTO POWER

- R. 46A(4) - Nothing contained in this rule shall affect the power of CIT (A) to direct the production of any document, or examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty whether on his own motion or on the request of the AO u/s 251(1)(a) or the imposition of penalty u/s 271.

# RELEVANT SUB-RULE 46A(1)

a. Where AO refused to admit the said evidence which ought to have been admitted
b. Where appellant was prevented by sufficient cause from producing evidence called upon by AO or relevant to any ground in appeal
c. Where appellant was prevented by sufficient cause from producing the AO any evidence which is relevant to any ground of appeal
d. Where AO made the impugned order without giving sufficient opportunity to appellant

# R. 46A(1)(A)

+ Where AO refused to admit the said evidence which ought to have been admitted
  - Faceless assessment !!!
  - Manually
    - Bulk
    - Any other reason
  - Evidence of refusal
    - E-mail
    - Speed post / courier

# R. 46A(1)(B) / (C)

+ Where appellant was prevented by sufficient cause from producing evidence called upon by AO or relevant to any ground in appeal
+ Where appellant was prevented by sufficient cause from producing the AO any evidence which is relevant to any ground of appeal
  - Not giving sufficient time
  - Evidence not with appellant – ED / GST, etc
  - Fire or another calamity
  - Third party refusing

# R. 46A(1)(D)

- Where AO made the impugned order **without giving sufficient opportunity** to appellant
  - Suo-moto additions
  - Assessment u/s 144
  - Addition without show cause

# PROCEDURE

1. Apply to admit Additional Evidence in duplicate
2. CIT(A) to send one set to AO for his Remand Report
3. AO to submit his Remand Report
4. CIT(A) to give the assessee a copy of Remand Report
5. Assessee to submit rejoinder on Remand Report
6. CIT (A) to decide on admission and follow further Appeal process

# JUDICIAL PRONOUNCEMENTS

- Bombay High Court in *Smt. Prabhavati S. Shah vs. CIT [1998] 231 ITR 1* - AAC should have admitted additional evidence in exercise of power u/s 250(5) as well as under Rule 46A(1)(c) considering the fact that AO had considered loan as income only on ground that summons issued to lenders were returned unserved and didn't provide opportunity to assessee during assessment proceedings

# JUDICIAL PRONOUNCEMENTS

- *CIT v. Virgin Securities and Credits P. Ltd (2011) 332 ITR 396 (Del)* - CIT(A) should admit the additional evidence if he finds that the same is crucial for the disposal of the appeal.
- Delhi High Court *in Chandrakant Chanu Bhai Patel 202 Taxman 262* - if additional evidence is without any blemish and in order to advance the cause of justice, the same ought to be admitted.

# JUDICIAL PRONOUNCEMENTS

- High Court of Delhi in *CIT vs. Manish Build Well (P) Ltd. in ITA No.928/2011 dt. 15.11.2011 (2011) 63 DTR 369* - after admission of additional evidence, it is mandatory to follow Rule 46A(3) of the Rule. It was found that the AO only objected the admissibility of additional evidence and restricted himself to comment on the merits of the evidence. Therefore, the Hon'ble court observes that the ld. CIT (A) did not follow the mandatory procedure for consideration of additional evidence at the first appellate stage.

# JUDICIAL PRONOUNCEMENTS

- ITAT Delhi in *ITO Vs. Kuber Chand Sharma- ITA No. 3982/Del/2009* – CIT (A) has admitted the additional evidence without fulfilling the categorical conditions laid down in Rule 46A, as explained by Hon'ble Delhi High Court in the case of Manish Build Well Pvt. Ltd. Consequently, his order on this issue is not tenable; however, the issue of merits remains. Besides, from the record it emerges that assessee wanted to file only government records & revenue record about crops - Matter set aside, restored back to AO to decide the same afresh after affording the assessee sufficient opportunity of being heard.

# REASONABLE OPP. TO AO

- CIT (A) cannot proceed with additional evidences by its own without giving an opportunity to assessing officer to verify additional evidences. It is mandatory for CIT (A) to remand additional evidences to AO.
- ITAT Delhi *ITO Vs Mrs. Anvita Abbi ITA No. 3707 / Del/2011 Ld.* CIT (A) admitted fresh evidences but did not allow any opportunity to AO for examining those evidences or furnishing any evidence in rebuttal as required by Rule 46A(3). Therefore, order of ld CIT (A) is in violation of Rule 46A. Matter set aside to AO.

# FINDING OF CIT(A) ON AO OBJECTION

- If AO objects to admission of additional evidence, then CIT (a) should give categorical finding in terms of rule 46A for admission thereof - *ITAT Delhi , ITO Vs. Kuber Chand Sharma (ITA No. 3982/Del/2009)*
- Reasons must be given for non-acceptance of additional evidence under rule 46A
  - *Abhay Kumar Shroff V/s. ITO 63 ITD 144(Pat)*
  - *Smt. Prabhavati S. Shah V/s. CIT, 231 ITR 278*
  - *Collector Land Katji 167 ITR 471 (SC)*

## OPPORTUNITY TO AO

- ITAT Chandigarh, *ITO Vs Bhagwan Dass, Contractor IT Appeal No. 383 (Chd.) of 2011.* On plain reading of Rule 46A, it is clear that it is introduced to place fetters on the right of the appellant, to produce before 1st Appellate Authority, any evidence, whether oral or documentary, other than the evidence produced by him, during the course of proceedings before the AO, except in the circumstances set out therein. It does not deal with the power of the 1st appellate authority, to make further enquiry.

## OPPORTUNITY TO AO

- In present case, assessee has already filed requisite details before AO & further detail was to be filed before AO & he refused to accept the same. Therefore, assessee was compelled to file details by way of Speed Post. Further, new evidence filed by assessee from govt. agency & the same are essential for disposal of appeal. AO was given due opportunities & he submitted remand report hence, CIT(A) has given due opportunity to AO, within Rule 46A.

## SUO MOTO CALL OF CIT(A)

- Where CIT (A) has called for production of any document on his own during the course of appellate proceedings, then he is not obliged to call for a remand report from AO on the said evidences. In such circumstances the revenue cannot raise the issue of violation of Rule 46A
  - *CIT v Surtech Hospital & Research Centre Ltd 293 ITR 53 (Bom),*
  - *CIT v Sagar Construction Pvt Ltd [2015] 56 taxmann.com 434 (Patna)*
  - Contrary view by the Kerala High Court in *CIT v E. D. Benny 283 CTR (Ker) 212*

## SUO MOTO CALL OF CIT(A)

- Assessee filed reply before AO in which several details as per query of AO were furnished at assessment stage including copy of cash book.
- Even if CIT(A) called for books of account, details and vouchers at appellate stage for examination, there was nothing wrong in his power to examine books of account as per Rule 46A(4)
  - *ITO & Anrs v Jaidka Woolen & Hosiery Mills P. Ltd & Anrs (2018) 68 ITR (Trib) 0216 (Delhi)*

# FAVORABLE REMAND REPORT

- Where CIT(A) has admitted additional evidences and called for remand report from AO & if AO gives the report in favour of assessee i.e. where AO accepts evidences filed by assessee & opines that additions are not warranted considering evidences, then CIT(A) considering remand report may allow appeal in favour of assessee. Revenue cannot be aggrieved by order of CIT(A) & file appeal before ITAT for which favourable remand report was given by AO.
  - *B.Jayalakshmi v ACIT [2018] 407 ITR 0212 (Mad)*
  - *Ramanlal Kamdar v CIT [1977] 108 ITR 0073 (Mad)*
  - *Jivatlal Purtapshi v CIT [1967] 65 ITR 0261 (Bom)*
  - *M.M. Annaiah v CIT [1970] 76 ITR 0582 (Mys)*

# Q&A

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