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Assessment Procedures

Introduction

Every taxation system requires assessment. In this regard, the Income Tax Laws of India are no different. Assessment simply means determination of Tax as per Taxation laws existing in that particular Assessment Year.

Assessments complete your filings

ITR is only the initial step, Intimations or Assessments make your filings complete

The 'Person' under assessment is called the Assessee. The Assessee can be an Individual / HUF / Firm / LLP / Cooperative / Company / AOP / BOI / Artificial Juridical Person.

Tax is assessed (ie. determined) under the following heads of income:

- Salary
- House Property
- Business / Profession
- Capital Gain
- Other Sources

It is understood that these heads of income would be applicable depending on the type of assessee. For example, a Company or Firm etc cannot earn salary. – only an individual can earn it.

Types of Assessments

An Assessee can be assessed in the following ways:

- Sec 140 A – Self Assessment
- Sec 143 (3) – Regular / Scrutiny Assessment
- Sec 144 – Best Judgment Assessment
- Sec 147 – Assessment / Reassessment of Income Escaping - Here we shall not deal with search and seizure situations.

[Self Assessment u/s 140 A](#)

- This simply means that the person is calculating own tax liability and filing ITR after payment of self-calculated tax.
- Since assessee himself calculates the tax and income returned – it is called self-assessment.
- The system of self-assessment is only to make the work of IT Dept easier – it is not the end of assessment. It is simply a case where the assessee pays tax and files the Return.

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- **The IT Dept only gives an acknowledgement / intimation u/s 143(1).** The assessee can file ITR as Self assessment under the different sections of 139 (Return within due date / Belated Return / Return of Loss etc.) or in response to notice u/s 142(1) or 148 or 153A
- The Self Assessment also covers cases where one has filed IT Return – and some Refund is due, When the IT Dept processes the Return and sends the Refund Cheque (Income Tax Refund Order) – it is sent under the cover of ‘Intimation u/s 143(1)’
- There is no assessment order by the Dept. under Self Assessment simply because the assessment is not being done by the department.
- Since the assessment is not being done by the IT Department, for legal purpose, the acknowledgment / intimation by IT Department is not considered as ‘Assessment’.

Regular / Scrutiny Assessment u/s 143(3)

For this, notice is issued u/s 143(2). The salient features are:

- This notice can be served only when the assessee has furnished Return of Income u/s 139(1) or 142(1)
- The notice u/s 143(2) has to be served on to the assessee within six months from the end of the relevant assessment year..
- The Assessing Officer (AO) is not required to possess any ‘reason to believe’. In this assessment, AO is charged with the duty to ensure that the assessee:
 - a) has not understated income
 - b) has not computed excessive loss
 - c) has not under paid taxes
- The AO may require documents / proof from the assessee – on which the AO will make his assessment and calculate the tax liability
- Also, while the scrutiny assessment is being processed, the assessee can also put forth claims that he had not made in the ITR – and these have to be considered by the AO.
- Consequently, in his assessment u/s 143(3) the AO can even reduce income below the returned income or assess loss higher than the returned loss.
- The assessment u/s 143(3) is completed with an assessment order in writing which should contain the tax computed under the signature of AO.
- If assessment u/s 143(3) is done on the basis of invalid return, the assessment order continues to operate till it is invalidated by the court.
- On remand (ie. if the cases goes to IT AT on some point, and IT AT sends it back to AO for reconsideration or correction, on question of fact or law) only the specified point can be dealt by the AO.
- Assessment made under this section would be final and the department cannot open the case again – unless there are valid reasons (‘reasons to believe’).

V.R.A. Cotton Mills’ case

The issue came up before the Punjab and Haryana High Court in the case of *V.R.A. Cotton Mills (P) Ltd. v. Union of India and Others*, (CWP No. 18193 of 2011) dated 27 September 2011 (reported in www.itatonline.org).

V.R.A. Cotton Mills filed a writ petition challenging the notice dated 30 September 2010 issued by the AO u/s.143(2) for A.Y. 2009-10, on the ground that the notice was not served within the

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prescribed time limit and accordingly, claimed that the initiation of assessment proceedings by the AO was bad in law. The Court opined that the expressions 'serve' and 'issue' were interchangeable, relying on the following legal precedents to construe the expression 'serve' as the date of issue of notice:

- *Banarsi Debi and Anr. v. ITO*, (53 ITR 100);
- *Collector of Central Excise v. M/s. M. M. Rubber & Co.*, (1991 AIR 2141 SC);
- *Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas & Co.*, (AIR 1966 SC 543); and
- *State of Punjab v. Khemi Ram*, (AIR 1970 SC 214).

The High Court dissented from its own earlier judgment in the case of *CIT v. AVI-OIL India (P.) Ltd.*, (323 ITR 242), on the ground that the legal precedents referred to above were not placed before the Court in the case of AVI-OIL India (*supra*) and therefore, the Court, in ignorance of law, had given literal meaning to the word 'served' in that case. Treating the decision of AVI-OIL India (*supra*) as per incuriam, the Court in V.R.A. Cotton Mills case (*supra*), held that the purpose of the statute would be better served, only if the expression 'served' was considered as being issue of notice. The Court, in light of the aforesaid findings, dismissed the writ petition of the assessee and construed the expression 'served' as meaning 'issue' of notice.

On the contrary, the following decisions of the High Courts, delivered in the context of section 143(2), upholding the interpretation of service of notice not being synonymous with issue of notice, were not considered by the High Court in the case of V.R.A. Cotton Mills (*supra*):

- *CIT v. Shanker Lal Ved Prakash*, (300 ITR 243) (Del.) — in this case, the High Court even issued directions to AOs to dispatch notices at least a fortnight before the expiry of the date of limitation;
- *CIT v. Yamu Industries Ltd.*, (306 ITR 309) (Del.) — the principles of section 282 were also applied in this case in interpreting the expression 'service' of notice;
- *CIT v. Cebon India Ltd.*, (34 DTR 119) (P&H);
- *CIT v. Pawan Gupta and Others*, (318 ITR 322) (Del.) and *Rajat Gupta v. CIT*, (41 DTR 265) (Del.) — In context of block assessment;
- *CIT v. Bhan Textiles (P) Ltd.*, (287 ITR 370) (Del.);
- *CIT v. Vardhman Estate (P) Ltd.*, (287 ITR 368) (Del.); and
- *CIT v. Dewan Kraft Systems (P) Ltd.*, (165 Taxman 139) (Del.).

The decision of the Punjab and Haryana High Court in the case of V.R.A. Cotton Mills case (*supra*), with due respect, therefore requires reconsideration.

Best Judgement Assessment u/s 144

- Conditions:
- Assessee fails to furnish IT R u/s 139(1) and has not furnished it U/s 139(4)
 - a) fails to comply with all terms of notice u/s 142(1)
 - b) fails to comply with direction issued u/s 142 (2A)
 - c) fails to comply with terms of notice u/s 143(2)
- Prior to proceeding on assessment u/s 144, the AO should give a show cause notice to the assessee. However if the AO has already issued notice u/s 142(1)(i) and the assessee has not

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complied with its terms, then AO can go ahead with assessment and no show cause notice is required.

- U/s 144 AO cannot assess income below returned income and cannot assess loss higher than the returned loss.
- Assessment u/s 144 can also be resorted to if AO is not satisfied with the correctness / completeness of Books of Accounts.

Assessment / Reassessment of Income Escaping Assessment u/s 147

- To undertake assessment u/s 147, notice has to be issued u/s 148 recording reasons thereof and AO should have 'reasons to believe' that income chargeable to tax has escaped assessment.
- The assessee has to file Return in response to notice u/s 148 – even if he has filed the return previously within due date. Also, the AO is duty bound to provide the assessee the reasons recorded by him – if the assessee requests for it after filing Return of Income in response to the notice.
- If there has been no previous assessment u/s 143(3) or 144, then proceedings u/s 147 is called assessment, else it is called reassessment.
- Also assessment / re-assessment u/s 147 cannot be undertaken for any AY, if assessment proceedings are already underway under any other section of the IT Act.
- The AO can also consider any other income under any head of income that comes to his detection subsequent to issue of notice u/s 148.

The above article explains the assessment procedures in the Income tax act. There are also other assessment procedures under search or seizure which may be explained in the articles later. Sometimes people are harassed by the tax officials and end up paying huge bribes; knowledge & correct execution of the assessment procedures, following all the provisions in accordance with law can save you from encouraging this corrupt practice.