

ASSESSMENT PROCEDURES

Q1. Write a short note on “Best Judgement Assessment”

[June 17 & Dec 17- 4 Marks]

Answer:

❖ Assessment shall be made by AO to the best of his judgment after considering all relevant materials which he has gathered. AO cannot reduce the tax liability of the assessee by BJA.

Ex-parte Assessment

❖ **Situation in which BJA is applicable:**

- (a) If the person fails to file the return u/s 139(1), 139(4) or 139(5) or an updated return u/s 139(8A); or
- (b) If the person fails to comply with terms of notice u/s 142(1); or
- (c) If the person fails to comply with directions u/s 142(2A) requiring him to get his accounts audited; or
- (d) If the person fails to comply with terms of notice u/s 143(2), requiring his presence or production of documents.

PC Note: In any of the above situations, AO is under an obligation to make BJA. Thus, BJA is not the discretionary power of AO but mandatory in nature.

❖ **PC Note:** A refund cannot be granted u/s 144.

❖ **Opportunity of being heard:** BJA can only be made after giving the assessee a reasonable opportunity of being heard. Such opportunity shall be given by serving a SCN calling upon the assessee to show cause(s), on a date & time specified in the notice, why the assessment should not be completed to the best of judgment of AO. However, such opportunity need not be given, where notice u/s 142(1) has already been issued.

❖ **Time limit for completion of assessment [Sec. 153(1)] = 12 months from the end of relevant AY.**

However, where an updated return u/s 139(8A) is furnished, an order of assessment u/s 144 may be made at any time before the expiry of 12 months from the end of the financial year in which such return was furnished.

Non-maintenance of proper A/cs: As per sec. 145(3), if AO is not satisfied with correctness or completeness of the accounts of the assessee or if no regular method of accounting or AS as notified by CG u/s 145(2)] is followed by the assessee, AO may make assessment in the manner provided u/s 144.

Q2. Write a short note on “Memorandum of Cross Objection”

[June 17 - 4 Marks]

Answer:

- Appeal to the ITAT shall be filed within 60 days of the date on which the order sought to be appealed against is communicated to the assessee or to the CIT, as the case may be.
- The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of CIT (Appeals) has been filed by the other party, may notwithstanding that the other party has not appealed against such order or any part thereof, file a memorandum of cross objections to the ITAT.
- The memorandum of cross objection shall be in the prescribed form or shall be disposed, of by the ITAT as if it were an appeal before it. The memorandum of cross objections has to be filed within 30 days of the receipt of notice.

PC Analysis

A **Memorandum of Cross Objections (MCO)** in **Income Tax** is a mechanism u/s **253(4) of the Income Tax Act, 1961**, that allows the respondent (i.e., the party in whose favor the order was passed) to raise objections against certain aspects of an appeal filed by the opposing party before the **Income Tax Appellate Tribunal (ITAT)**.

Ex: If the **Assessing Officer (AO)** makes an addition of ₹10 lakh, & taxpayer appeals against it before the ITAT, the **Income Tax Department (respondent)** can file an MCO to challenge other issues decided against them in the same case.

Q3. Write short notes on “Regular assessment”

[Dec 17 – 4 Marks]

Answer:

- The term "regular assessment" is defined in **Section 2(40)** to mean assessment made **u/s 143(3)** or **Section 144**.
- When the Assessing Officer makes an order **u/s 143(3)** after serving notice **u/s 143(2)**, it is called as regular assessment.
- Where there is failure on the part of the assessee to furnish the return of income or for furnishing the details sought for or similar faults listed in the section, the best judgment assessment made **u/s 144** is also a regular assessment.
- Assessment u/s 143(3) should be completed within **12 months from the end of the relevant AY**.

Q4. Write a short note on “Protective assessment or alternate assessment”

[Dec 17 – 4 Marks]

Answer:

A **protective assessment** is made by the Income Tax Department when there is uncertainty about who should be taxed for a particular income. It is used as a precautionary measure to prevent revenue loss while the correct tax liability is determined.

Though there is no provision in the Income Tax Act authorising the levy of income tax on a person other than by whom the income tax is payable, yet it is open to income tax authorities to make a protective or alternative assessment if it is not ascertainable who is really liable to pay the tax among a few possible persons.

1. **Purpose:** When there is doubt about the rightful taxpayer (e.g., income belonging to A but claimed by B).
2. **Legal Basis:** Courts allow protective assessments, but tax collection is done only from the actual taxpayer.
3. **Finalization:** Once the ownership of income is confirmed, the protective assessment on the wrong person is dropped, and the regular assessment is finalized on the right taxpayer.

Example of cases where protective assessment can be made are:

- (a) Litigation between two parties concerned in civil courts.
- (b) Possibility of Benami Transaction but still not totally clear.
- (c) Possibility of diversion of Income to close Kith & Kin but still not totally clear.

It must, however be noted that while protective assessment is possible, a protective order for recovery is not possible, in making a protective assessment, the authorities are merely making an assessment & leaving it as a paper assessment until the matter is decided one way or another.

Furthermore, a protective order of assessment can be passed but not a protective order of penalty.

Q5. If any assessment is remanded back to the AO, can he introduce new sources of income for assessment?

[June 14 - 3 Marks]

Answer:

Where the assessment is set aside by the Tribunal & the matter is remanded to the Assessing Officer, the AO **cannot introduce new sources of income** that were not part of the original assessment to enhance the assessment.

Any power to enhance is confined to the old sources of income which were the subject matter of appeal

Legal Standpoint:

1. **Limited Scope of Remand:** The AO can only reassess issues that were **specifically remanded** by the appellate authority.
2. **Jurisdictional Limits:** Courts have held that the AO **cannot assess new sources of income** that were not originally considered in the first assessment.

Thus, while the AO can re-examine or re-assess existing issues, **he cannot bring in fresh sources of income** that were not originally assessed.

Q6. What do you understand by “incorrect claim apparent from any information in the return”? [Dec 14 - 3 Marks]

Answer: “An incorrect claim apparent from any information in the return” shall mean the following claims, on the basis of an entry in the return of income:

- (a) of an item which is inconsistent with another entry of the same or some other item in the return of income.
- (b) In respect of which the information required to be furnished under the Act to substantiate the entry has not been furnished.
- (c) In respect of deduction, where such deduction exceeds specified statutory limit expressed as monetary amount or percentage or ratio or fraction.

Q7. The income-tax assessment of Nathan Windmills Ltd. was completed u/s 143(3) of the income-tax Act, 1961 for the AY 2013-14, accepting the claim of the assessee for deduction u/s 80-IA. The Explanation to Section 80-IA was later on substituted by the Finance (No. 2) Act, 2009 retrospectively w.e.f. 01.04.2000, whereby the deduction was denied to profits derived as mere works contractor. The assessee was a mere works contractor only. The Assessing Officer, after nearly five years, sought to initiate the reassessment proceedings in March, 2021 on the grounds that the assessee had not disclosed that he had undertaken the projects only on works contract & that in the light of the retrospective amendment, deduction u/s 80-IA was not available, as a consequence of which income chargeable to tax has escaped assessment. Is the reopening justified?

[June 14 – 5 Marks]

Answer:

- Reassessment proceedings can be initiated u/s 147, where income chargeable to tax has escaped assessment.
- *Where the assessment had been originally completed u/s 143(3), reopening of assessment beyond four years can be made only where there is failure on the part of the assessee to disclose all material facts necessary for making the assessment.*
- When the original assessment was completed, the same was a scrutiny assessment; the assessment was made after examining the claim for deduction u/s 80-IA, including the audit reports filed.
- When the original assessment was made, there was no denying of deduction for works contractor also. Hence it cannot be said that the assessee had failed to disclose material facts.
- **As a consequence, reassessment proceedings are not justified.** The original assessment can be tested in the light of the law as it then stood & not on the basis of a retrospective assessment.

Q8. India Telephones Ltd. paid Rs. 15 lakhs per annum to Bharat Mobiles Ltd. for each of the mobile towers used by it. During the FY 24-25, India Telephones Ltd. paid Rs. 435 lakhs to Bharat Mobiles Ltd. It deducted tax at source u/s 194C & whereas the Assessing Officer claimed that the assessee must have deducted tax at 10% u/s 194-I. Decide the correctness of the action of assessee vis a vis the Assessing Officer. **[June 18 – 4 Marks]**

Answer:

- The facts of the case given above are similar to that of Indus Towers Ltd v. CIT (2014) 364 ITR 114 (Del).
- The towers rented out was a passive infrastructure facility which enabled the parties to use technical & specialized equipment maintained by the assessed.
- The mobile towers are neutral platform without which the mobile operators could not operate.
- The renting of mobile tower cannot be called as renting of land.
- The arrangement was the use of machinery plant or equipment i.e. the passive infrastructure & it is incidental that it was necessary to house the equipment in some premises.
- The renting of machinery hence is liable for tax deduction u/s 194-I at the rate applicable for the payment made for use of plant & machinery.

Q9. Saravanan & Co., a firm, had borrowed moneys for its windmills, on which interest of Rs. 23 lakhs had been paid by the firm. The income from the generation & distribution of electricity by the windmills was subject to 100% deduction u/s 80-IA. AO wants to disallow the interest of Rs. 23 lakhs, invoking Section 14A. Is he justified? **[June 18 – 4 Marks]**

Answer:

- **Issue Involved:**

The issue under consideration is whether the provisions of Section 14A can be invoked in disallowing the expenditure incurred in respect of the income for which deduction is claimed under Chapter VI-A.

- **Provisions applicable:**

As per Section 14A, expenditure incurred in relation to income which does not form part of the total income under the Act, will not be allowed in computing the total income of the assessee.

- **Analysis:**

The words "do not form part of the total income under this Act" used in Section 14A are significant & important. Income which qualifies for deductions u/s 80C to 80U has to be first included in the total income of the assessee & then allowed as a deduction.

However, income referred to in Chapter III do not form part of the total income & therefore, as per Section 14A, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to such income which does not form part of the total income. Deduction u/s 80P covered in Chapter VIA is different from the exclusions/exemptions provided under Chapter III.

- **Conclusion:**

Action taken by the Assessing Officer in disallowing the expenditure incurred with respect to income for which deduction under Chapter VI-A is claimed, by invoking the provisions of Section 14A is, therefore, not justified.

Q10. Mr. Bharadwaj (Age 50) returned to India in April 2023 after remaining outside India for 22 years. He continued to hold a bank account outside India during the FY 24-25. In Sep 2025, Assessing Officer wants to issue a notice u/s 148 for the AY 2012-13 in order to tax a vacant land purchased (outside India) out of income chargeable to tax in India & which escaped assessment previously. Is the issue of notice valid in law? **[Dec 18 – 2 Marks]**

Answer:

Before issuing any notice u/s 148 of the Act, the assessing officer must comply with section 148A.

Section 148A

- **Enquiry:** AO shall conduct any enquiry (if required) with prior approval of specified authority (referred in sec. 151), w.r.t. information which suggests that income has escaped assessment;
- **OOBH & SCN:** AO shall give opportunity of being heard by serving upon assessee SCN as to why notice u/s 148 should not be issued on the basis of information which suggests that income has escaped assessment in his case for RAY.

Note: Time limit to reply to SCN will be specified in the notice (Min = 7 days & Max = 30 days).

- **Passing Order:** AO shall (after considering reply of assessee in response to SCN) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice u/s 148, by passing an order, with prior approval of specified authority, **within 1 month from the end of the month in which reply to SCN is received**

Exception: Provisions of section 148A is not applicable in following cases

1. Search cases
2. Information collected in faceless collection of information scheme u/s 135A.

Information is required by AO for reopening not “Reasons to believe”. In view of the above provisions of the Act, the issue of notice U/s 148 by the AO is not valid in law.

Q11. Magnet Ltd. has following issues with regard to its assessment & tax management. You are to provide brief answers to the following: **[June 23 – 2 Marks]**

- (a) It has a refund due of the AY 2023-24 of Rs. 5,60,000 which has been withheld. Explain how & when, such withholding of refund is sanctioned by law.
- (b) Assessing Officer in order to invoke section 147 & to issue notice u/s 148 has sought some information for AY 20-21. Briefly explain the scope of power of the Assessing Officer u/s 148A.
- (c) For the PY 24-25, it has paid advance tax of Rs. 6 lakhs on 20th March 2025. Its total income for AY 25-26 amounts to Rs. 30 lakhs. Rate of tax applicable is 25% + HEC @ 4%. It wants to know the amount of interest payable u/s 234C.

Answer:

(a) Power to withhold refund [Sec. 241A]

An Assessing Officer may, for reasons to be recorded in writing & with the previous approval of PCIT / CIT, withhold the refund due to the assessed u/s 143(1) up to the date on which the assessment u/s 143(3) is made.

This power to withhold refund could be made where the Assessing Officer is of the opinion that the grant of refund is likely to adversely affect the Revenue.

(b) Scope of power of the Assessing Officer u/s 148A

- **Enquiry:** AO shall conduct any enquiry (if required) with prior approval of specified authority (referred in sec. 151), w.r.t. information which suggests that income has escaped assessment;
- **OOBH & SCN:** AO shall give opportunity of being heard by serving upon assessee SCN as to why notice u/s 148 should not be issued on the basis of information which suggests that income has escaped assessment in his case for RAY.

Note: Time limit to reply to SCN will be specified in the notice (Min = 7 days & Max = 30 days).

- **Passing Order:** AO shall (after considering reply of assessee in response to SCN) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice u/s 148, by passing an order, with prior approval of specified authority, **within 1 month from the end of the month in which reply to SCN is received.**

(c) Total Tax Liability:

⇒ **Tax:** 25% of ₹30,00,000 = ₹ 7,50,000 + 4% HEC = ₹ 7,80,000.

⇒ **Advance Tax Installments:**

- By 15th June (15%): 15% of ₹7,80,000 = ₹1,17,000
- By 15th September (45%): 45% of ₹7,80,000 = ₹3,51,000
- By 15th December (75%): 75% of ₹7,80,000 = ₹5,85,000
- By 15th March (100%): 100% of ₹7,80,000 = ₹7,80,000

⇒ **Payments and Shortfalls:**

- By 15th June: No payment made. Shortfall = ₹1,17,000
- By 15th September: No payment made. Shortfall = ₹3,51,000
- By 15th December: No payment made. Shortfall = ₹5,85,000
- By 15th March: ₹6,00,000 paid on 20th March 2025. Shortfall = ₹ 7,80,000. [Refer Note Below]

⇒ **Calculate Interest u/s 234C:**

- For June Instalment: Interest = 1% of ₹1,17,000 × 3 months = ₹3,510
- For September Instalment: Interest = 1% of ₹3,51,000 × 3 months = ₹10,530
- For December Instalment: Interest = 1% of ₹5,85,000 × 3 months = ₹17,550
- For March Instalment: Interest = 1% of ₹ 7,80,000 × 1 month = ₹7,800.

Total Interest = ₹3,510 + ₹10,530 + ₹17,550 + ₹1,800 = ₹39,390

Note: Amount paid on/before 31st march shall be treated as advance tax paid. Yes, if advance tax is paid after the due date of 15th March but on or before 31st March, it is subject to interest under Section 234C of the Income Tax Act. This interest is charged at 1% per month on the shortfall amount for a period of one month.

Q22. Provide the answer to the following case study under the below-mentioned heads: (i) Issue involved (ii) Provisions applicable to the issue (iii) Analysis of the issue & (iv) Conclusion. The assessment of Vishal, was taken up for scrutiny by the Income-tax Department. The Assessing Officer (AO) found that a sum of Rs. 20 lakhs was credited in the bank account of Vishal. It was explained that the said amount had been received by him from his friend Gautam. The amount had been accepted through an account payee crossed cheque by way of loan. When the AO enquired Gautam, he accepted that he had given the amount to Vishal as loan. The AO insisted that mere acceptance by Gautam that he had given the amount to Vishal is not sufficient & that Vishal should prove the creditworthiness of Gautam, otherwise he would add the sum of Rs. 20 lakhs as unexplained cash credit. Is the AO correct in his contention?

State tax liability & penalty in case the amount of loan is taxed as income of Vishal in the assessment. [June 23 – 8 Marks]

Answer:▪ **Unexplained cash credit Issue involved**

The issue involved is whether the AO is correct in his contention that the onus is on the assessee to prove the credit worthiness of the lender, even where the lender accepts that he had lent the money in question to the assessee.

▪ **Provisions applicable**

Section 68 brings to tax any sum found credited in the books of an assessee, where the assessee does not offer explanation about the nature & source thereof, or the explanation offered by him is not found satisfactory by the Assessing Officer.

▪ **Analysis**

For a cash credit not to be treated as income, the assessee should not only prove the identity of the lender & the genuineness of the transaction, but also prove the source for the lender, or in other words, credit worthiness of the lender or that the lender had the means to lend such amount to the assessee.

Mere confirmation by the lender that he had lent the amount in question to the assessee will not suffice.

▪ **Conclusion**

The contention of the AO is hence valid & if Vishal is unable to prove the credit worthiness of Gautham, the AO will be justified in making the addition u/s 68B.