

MBA (Business Economics) IV Semester

Paper- Business Tax Management (405-FM)

UNIT- V Topic- Income tax Authorities and Types of Assessment

Income Tax Authorities

Income tax or the tax taken by the government on an individual on his earnings is income tax. The government has set up various authorities for lawful execution of the income Tax Act and to oversee the righteous functioning of the income tax department. The various **income tax authorities** for the purposeful existence of the Act are :

1. CBDT or the Central Board of Direct Taxes which has been constituted under the Central Board of Revenue Act 1963
2. Director general of income tax
3. Chief commissioner of income tax
4. Directors and commissioner of income tax
5. Additional directors and additional commissioners of income tax
6. Joint directors and joint commissioners of income tax
7. Deputy directors and deputy commissioners of income tax
8. Assistant directors and assistant commissioners of income tax
9. Income tax officers
10. Income tax inspectors

It is a joint role of all these authorities that tax payer abide by the rule mentioned in the beginning of every financial year and pay their taxes accordingly.

The supreme body with reference to the direct tax setup in India is the **Central Board of Direct Taxes**. This board comprises of a leading Chairperson and a body of 6 members.

Appointment of Income Tax Authorities

The Central Government can appoint those persons whom it thinks are fit to become Income Tax Authorities. The Central Government can authorize the Board or a Director-General, a Chief Commissioner or a Commissioner or a Director to appoint income tax authorities below the ranks of a Deputy Commissioner or Assistant Commissioner, According to the rules and regulations of the Central Government controlling the conditions of such posts.

Powers of Income-tax Authorities [Sections 131 to 136]

1. Discovery, production of evidence etc. [Section 131]: The Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner, Commissioner (Appeals), the Chief

Commissioner and the Dispute Resolution Panel referred to in section 144C have the powers vested in a Civil Court under the Code of Civil Procedure, 1908 while dealing with the following matters: (i) discovery and inspection; (ii) enforcing the attendance of any person, including any officer of a banking company and examining him on oath; (iii) compelling the production of books of account and documents; and (iv) issuing commissions [Section 131(1)] The powers aforementioned are normally those exercisable by a Court when it is trying a suit. While exercising these powers, the authorities act in a quasi-judicial capacity and ought to conform to the principles of judicial procedure.

If the Director General or Director or Joint Director or Assistant Director or Deputy Director or the authorized officer referred to in section 132(1), before he takes action under the said subsection, has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then for the purposes of making an enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred in section 131(1) on the income-tax authorities referred to therein, even if no proceedings with respect to such person or class of persons are pending before him or any other income-tax authority [Section 131(1A)]. For facilitating quick collection of information on request from tax authorities outside India, notified income-tax authorities (not below the rank of Assistant Commissioner of Income-tax), as may be notified by the Board, to now have powers under section 131(1) for making an inquiry or investigation in respect of any person or class of persons relating to an agreement for exchange of information under section 90 or 90A, even if no proceeding is pending before it or any other income-tax authority with respect to the concerned person or class of persons [Section 131(2)]. Further, the said income-tax authority is vested with the power to impound or retain in its custody for such period as it may think fit, any books of account or other documents produced before it in any proceeding under this Act. The powers are unrestricted in the case of all the authorities except the Assessing Officer or an Assistant Director or Deputy Director whose powers are subjected to two restrictions; (i) he must record his reasons for impounding books of account or other documents; and (ii) if he desires to retain in his custody any such books or documents for a period exceeding fifteen days (excluding holidays), he must obtain the prior approval of the Chief Commissioner or Director General or Commissioner or Director, as the case may be, for the purpose [Section 131(3)].

2. Search and Seizure [Section 132]: Under this section, wide powers of search and seizure are conferred on the income-tax authorities. The important points relating to this provision have been briefly summarised below: The provisions of the Criminal Procedure Code relating to searches and seizure would, as far as possible, apply to the searches and seizures under this Act. Contravention of the orders issued under this section would be punishable with imprisonment and fine under section 275A. (i) Search and seizure can be authorised by Director General or Director or the Chief Commissioner or Commissioner or Additional Director or Additional Commissioner or any such Joint Director or Joint Commissioner as may be empowered by the Board. A Director General or Director or the Chief Commissioner or Commissioner may

authorise any Joint Director, Joint Commissioner, Additional Director or Additional Commissioner, Assistant Director, or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer. A Additional Director or Additional Commissioner, Joint Director or Joint Commissioner can authorise Assistant Director or Deputy Director or Assistant Commissioner or Deputy Commissioner or Income-tax Officer. Thus, under section 132(1), the income-tax authorities listed above are empowered to authorise other income-tax authorities to conduct search and seizure operations.

The authorities empowered to issue authorization are: (1) Director General or Chief Commissioner; (2) Director or Commissioner; and (3) such Additional Director or Additional Commissioner, Joint Director or Joint Commissioner as are empowered by the CBDT to do so.

(ii) Such authorisation could take place if the authority believes, on the basis of information in his possession: (a) that the person to whom a summons under section 131(1) or notice under section 142(1) was issued to produce or cause to produce books of account or other documents has omitted or failed to do so; or (b) that a person to whom a summons or a notice has been or might be issued, does not or would not produce any books of account or other documents called for or which will be useful or relevant to any proceeding under the Income-tax Act, 1961 or (c) that a person who is in possession of any valuable articles or things, including money, bullion or jewellery etc. (which has not been disclosed or would not be disclosed by the person concerned for income-tax purposes). (iii) Such an authorisation can empower the authorised officer to enter any building or place or vehicle, vessel or aircraft where he has reasons to suspect that such books of account, documents, articles including money, jewellery, valuables etc. are kept and in case they are found, he may seize them, place marks of identification on them or make a note or inventory thereof for the purpose. However, any bullion, jewellery or other valuable article or thing, which is in the nature of stock-in-trade of the business, found as a result of search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business. The person who is in possession or control of books of account or other documents maintained in the form of electronic records, shall be required to afford the necessary facility to authorised officer to inspect all such books of account or other documents. Electronic record as defined in section 2(1)(t) of the Information Technology Act, 2000 means data, record or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer generated microfilm. In the discharge of such a duty, he is authorised to break open the locks in case keys are not readily available. However, the books of account and other documents seized should be re-turned within a period of 30 days from the date of the order of assessment under section 153A or section 158BC(c), unless the reasons for retaining the same are recorded and approved by the Chief Commissioner or Commissioner or Director General or Director. The books or other records cannot be retained for a period exceeding 30 days after the assessment proceedings for the relevant year are over. The persons from whose custody any books of account or other documents have been seized may make copies thereof or take extracts there from. (iv) The Authorised Officer is empowered to search any person in or about the building or place in respect of which a search has been authorised, if he has reason to suspect that any article

for which the search is being made is concealed about his person. This Authorised Officer is also entitled to search any person who has got out of or is able to get into or is in the building, place, vessel, vehicle or aircraft in respect of which a search has been authorised, if he has reason to suspect that such person has secreted about his person any books of account or other documents, money, bullion, jewellery or other valuable articles for which the search is being made. (v) The Commissioner of Income-tax has the power to authorise the search of any building, place, vessel, vehicle, aircraft etc., within his territorial jurisdiction and also in cases where he has no jurisdiction over the persons concerned, if he has reason to believe that any delay in obtaining authorisation from the Commissioner having jurisdiction over the person would be prejudicial to the interests of revenue. (vi) Where a search for any books of account or other documents or assets has been authorised by any authority who is competent to do so, and the Commissioner has reason to suspect that such books of account or the documents of the assessee are kept in any building, place, vessel, vehicle or aircraft not specified in the search warrant, he may authorise the authorised officer to search such other building, place, vessel, vehicle or aircraft. Accordingly, if a search warrant is issued by the Commissioner of Income-tax, authorising the search of a premises in a particular place specified in the search warrant and the Authorised Officer finds that the books of account or other documents and/or assets have been secreted in a building or place not specified in the search warrant, he could request the local Commissioner to authorise him to search that building or place. (vii) Now there is a rebuttable presumption to the effect that the books of account or other documents and assets found in the possession of any person in the course of a search belong to such person and also that the contents of such books of account and other documents are true and that the signature and every other part of such books of account and other documents are in hand-writing of the persons who can reasonably be assumed to have signed or written the books of account or other documents. (viii) Where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised Officer may serve an order on the owner or the person who is in immediate possession thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such authorised officer and such action of the Authorised Officer shall be deemed to be seizure of such valuable article or thing. This is called a restraint order. However, such a deeming seizure would not apply to stock-in-trade of the business. (ix) The authorised officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing (for reasons other than those mentioned in (viii) above] serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section. However, serving of such an order shall not be deemed to be seizure of such valuable article or thing. (x) The examination of any person may be not merely in respect of any books of account, other documents or assets found as a result of the search but also in respect of all matters relevant for the purposes of any investigation

under the Act. (xi) An order as mention under point (ix), shall not be in force for a period exceeding 60 days from the date of the order [Section 132(8A)]. (xii) The person from whose custody any books of account or other documents are seized under sub-section (1) or sub-section (1A) may make copies thereof, or take extracts therefrom, in the presence of the authorized officer or any other person empowered by him in this behalf, at such place and time as the authorized officer may appoint in this behalf [Section 132(9)]. (xiii) Where the authorized officer has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of point (ii) above, the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing seized under that sub-section shall be handed over by the authorized officer to the Assessing Officer having jurisdiction over such person within a period of 60 days from the date of which the last of the authorizations for search was executed and thereupon the powers exercisable by the authorized officer under sub-section (8) or sub-section (9) shall be exercisable by such Assessing Officer [Section 132(9A)]. (xiv) If a person, legally entitled to the books of account or other documents seized, objects for any reason to the approval given by the Chief Commissioner, Commissioner, Director General or Director to extend the period of retention of the same by the Assessing Officer beyond 30days, he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents and the Board may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit. [Section 132(10)]. (xv) The Board may make rules in relation to any search or seizure under this section; in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the Authorised Officer— (a) for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available ; (b) for ensuring safe custody of any books of account or other documents or assets seized.[Section 132(14)]. (xvi) For the purpose of this section, the word "proceeding" means any proceeding in respect of any year under this Act, which may be pending on the date on which a search is authorised under this section or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.

3. Power to requisition books of account etc. [Section 132A]: (i) Where the Director General or Director or the Chief Commissioner or Commissioner on the basis of information in his possession, has reason to believe that- (a) any person to whom a summons under section 131(1) or a notice under section 142(1) was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents, as required by such summons or notice and the said books of account or other documents have been taken into custody by any officer or authority under any other law for the time being in force, such as, by the Collector of Customs, the Sales-tax Commissioner etc. or (b) any books of account or other documents will be useful for, or relevant to, any proceeding under this Act and any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, such books of account or other documents on the return of such books of account or other documents by any

officer or authority by whom or which such books of account or other documents have been taken into custody under any other law for the time being in force, such as, by the Collector of Customs, the Sales-tax Commissioner etc. or (c) any assets represent either wholly or partly income or property which has not been, or would not have been, disclosed for the purposes of this Act by any person from whose possession or control such assets have been taken into custody by any officer or authority under any other law for the time being in force, such as, by the Collector of Customs, the Sales-tax Commissioner etc. then, the Director General or Director or the Chief Commissioner or Commissioner may authorise any Additional Director, Additional Commissioner, Joint Director Joint Commissioner, Assistant Director Deputy Director, Assistant Commissioner, Deputy Commissioner or Income-tax Officer (referred to as the requisitioning officer) to require the officer or authority under any other law referred above, as the case may be, to deliver such books of account, other documents or assets to the requisitioning officer. (ii) On a requisition being made under (i), the officer or authority under any other law referred above, as the case may be, shall deliver the books of account, other documents or assets to the requisitioning officer either forthwith or when such officer or authority is of the opinion that it is no longer necessary to retain the same in his or its custody. (iii) Where any books of account, other documents or assets have been delivered to the requisitioning officer, the provisions of sections 132(4A) to 132(14) and section 132B shall, so far as may be, apply as if such books of account, other documents or assets had been seized under section 132(1) by the requisitioning officer from the custody of the concerned person and for the words "the Authorised Officer" occurring in any of the above mentioned sections, the words "the requisitioning officer" were substituted.]

4. Application of retained assets [Section 132B]: Section 132B(1), inter alia, provides that the assets seized under section 132 or requisitioned under section 132A may be adjusted against - (1) any "existing liability" under the Income-tax Act, 1961 Wealth-tax Act, 1957 etc.,; and (2) the amount of liability determined on completion of assessments pursuant to search, including any penalty levied or interest payable in connection with such assessment and in respect of which such person is in default or deemed to be in default.

"Existing liability" does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII of the Income-tax Act, 1961. If the assets consist solely or money or partly or money and partly of other assets, the Assessing Officer may apply the money in discharge of the liabilities mentioned above. The assessee shall be discharged to the extent of the money so applied. The assets other than money may also be applied for the discharge of such liabilities which still remains undischarged. For this purpose, such assets shall be deemed to be under distraint, as if such distraint was effected by the Assessing Officer or, as the case may be, the Tax Recovery Officer under authorization from the Chief Commissioner or Commissioner under section 226(5). The Assessing Officer or the Tax Recovery Officer, as the case may be, may recover the amount of such liabilities by the sale of such assets in the manner laid down in the Third Schedule. Where the person concerned makes an application to the Assessing Officer

within 30 days from the end of the month in which the asset was seized, for release of the asset and explains the nature and source of acquisition of seized assets is explained satisfactorily, then, such assets are required to be released within a period of 120 days from the date on which last of the authorisations for search under section 132 is executed after meeting any existing liabilities. The assessee shall be entitled to simple interest at $\frac{1}{2}\%$ per month or part of a month, if the amount of assets seized exceeds the liabilities eventually, for the period immediately following the expiry of 120 days from the date on which the last of the authorisations for search under section 132 or requisition under section 132A was executed to the date of completion of the assessment under section 153A or under Chapter XIV-B.

5. Power to call for information [Sections 133]: The Assessing Officer, the Deputy Commissioner (Appeals), the Joint Commissioner or the Commissioner (Appeals)] may call for following information for the purposes of this Act- (1) require any firm to furnish him with a return of the names and addresses of the partners of the firm and their respective shares; (2) require any Hindu undivided family to furnish him with a return of the names and addresses of the manager and the members of the family; (3) require any person whom he has reason to believe to be a trustee, guardian or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian or agent, and of their addresses; (4) require any assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any previous year rent, interest, commission, royalty or brokerage, or any annuity, not being any annuity taxable under the head "Salaries" amounting to more than one thousand rupees, or such higher amount as may be prescribed], together with particulars of all such payments made; (5) require any dealer, broker or agent or any person concerned in the management of a stock or commodity exchange to furnish a statement of the names and addresses of all persons to whom he or the exchange has paid any sum in connection with the transfer, whether by way of sale, exchange or otherwise, of assets, or on whose behalf or from whom he or the exchange has received any such sum, together with particulars of all such payments and receipts; (6) require any person, including a banking company or any officer thereof, to furnish information in relation to such points or matters, or to furnish statements of accounts and affairs verified in the manner specified by the Assessing Officer, the Deputy Commissioner (Appeals), the Joint Commissioner or the Commissioner (Appeals), giving information in relation to such points or matters as, in the opinion of the Assessing Officer, the Deputy Commissioner (Appeals)], the Joint Commissioner or the Commissioner (Appeals)], will be useful for, or relevant to, any enquiry or proceeding under this Act : Under the existing provisions of section 133(6), the prescribed authorities have the power to call for any information from any person which will be useful for or relevant to any proceedings under the Act. Such powers may also be exercised by the Director-General, the Chief Commissioner, the Director and the Commissioner. Further, the power in respect of an inquiry, in a case where no proceeding is pending, shall not be exercised by any income-tax authority below the rank of Director or Commissioner without the prior approval of the Director or as the case may be, the Commissioner. For facilitating quick collection of information on request from tax authorities outside India, notified income-tax

authorities (not below the rank of Assistant Commissioner of Income-tax) to have powers under section 131(1) for making an inquiry or investigation in respect of any person or class of persons relating to an agreement for exchange of information under section 90 or 90A, even if no proceeding is pending before it or any other income-tax authority with respect to the concerned person or class of persons. Such notified authorities are also empowered, for the purposes of an agreement referred to in section 90 or section 90A, to exercise the powers conferred under section 133 to call for information, irrespective of whether any proceedings are pending before it or any other income-tax authority.

6. Power of Survey [Section 133A]: An income-tax authority may enter any place: (i) within the limits of the area assigned to him, or (ii) any place occupied by any person in respect of whom he exercises jurisdiction, or (iii) any place in respect of which he is authorised for the purposes of this section by such income-tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place at which a business or profession is carried on and require any proprietor, employee or any other person/s, who may at that time/place be attending in any manner to or helping him to carry on any such business or profession. This power may be exercised: (i) to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place; (ii) to afford him the necessary facility to check or verify the cash, stock or other valuable articles or things which may be found therein; and (iii) to furnish such information as he may require as to any matter which may be useful for or relevant to any proceeding under the Income-tax Act, 1961.

This power may be exercised in respect of any place with which the assessee is connected, whether or not such place is the principal place of business or profession. It will also include any other place, whether any business or profession is carried on therein or not, in which the person carrying on the business or profession states that any of his books of account or other valuable article or thing relating to his business or profession is kept. The income-tax authority may enter any place of business or profession mentioned above only during the hours at which such place is open for the conduct of business or profession and in the case of any other place, only after sunrise and before sunset. The income-tax authority exercising this power of survey may: (i) place marks of identification, if he finds it necessary, on the books of account or other documents inspected by him and make or cause to be made extracts or copies therefrom; (ii) impound and retain in his custody for such period as he thinks fit any book of account or other documents inspected by him after recording reasons for doing so. However, the income tax authority cannot retain in his custody such books of account etc. for a period exceeding 10 days (excluding holidays) without obtaining the approval of the Chief Commissioner or Director General therefor, as the case may be. (iii) make an inventory of any cash, stock or valuable article or thing checked or verified by him; and (iv) record the statements of any person which may be useful for or relevant to any proceedings under the Income-tax Act, 1961. However, the income-tax authority cannot remove or cause to be removed from the place where he has entered, any

cash, stock or other valuable article or thing. The income-tax authorities would also have the power to collect information and record the statements of any of the persons concerned at any time after any function, ceremony or event even before the stage of commencement of assessment proceedings for the following year for which the information may be relevant, if they are of the opinion that having due regard to the nature, scale and extent of the expenditure incurred, it is necessary to do so. This provision is intended to help in collecting evidence about ostentatious expenditure immediately after the event to be used at the time of the assessment. If any person who is required to provide facility to the income-tax authority to inspect the books of account or the other documents or to check or verify any cash, stock or other valuable articles or to furnish any information or to have his statement recorded, either refuses or evades to do so, the income-tax authority would be entitled to use all the powers vested in it under section 131(1) for enforcing proper compliance with the requirements. However, no action under sub-section (1) shall be taken by the Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of Income-tax except with the prior approval of the Joint Director or the Joint Commissioner, as the case may be. For the purpose of this section, "proceeding" means any proceeding under this Act in respect of any year which may be pending on the date on which the powers under this section are exercised or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.

7. Power to collect certain information [Section 133B] (i) Under this section, an income-tax authority may enter any building or place (at which a business or profession is carried on) within its jurisdiction or any building or place (at which a business or profession is carried on) which is occupied by any person in respect of whom the said authority exercises jurisdiction for the purpose of collecting any information which may be useful for or relevant for the purposes of the Act. It is not necessary that such a place should be the principal place of the business or profession. (ii) The authority may require any proprietor, employee or any other person who may at the time and place be attending in any manner to or helping in carrying on such business or profession to furnish such information as may be prescribed. (iii) An income-tax authority may enter any place of business or profession referred to above only during the hours at which such place is open for business. (iv) Such authority shall on no account remove or cause to be removed from the building or place wherein he has entered any books of account or other valuable articles or things. (v) In this section, income-tax authority means a Joint Commissioner, an Assistant Director or Deputy Director or an Assessing Officer, and includes an Inspector of Income-tax who has been authorised by the Assessing Officer to exercise the power conferred under this section in relation to the area in respect of which the Assessing Officer exercises jurisdiction or any part thereof.

8. Power to inspect registers of companies [Section 134]: The Assessing Officer, the Joint Commissioner or the Commissioner (Appeals), or any person subordinate to him authorised in writing in this behalf by the Assessing Officer, the Joint Commissioner or the Commissioner

(Appeals), as the case may be, may inspect and if necessary, take copies, or cause copies to be taken, of any register of the members, debenture holders or mortgagees of any company or of any entry in such register.

9. Other powers [Sections 135 and 136]: The Director General or Director, the Chief Commissioner or Commissioner and the Joint Commissioner are competent to make any enquiry under this act and for all purposes they shall have the powers vested in an Assessing Officer in relation to the making of enquiries. If the Investigating officer is denied entry into the premises, the Assessing Officer shall have all the powers vested in him under sections 131(1) and (2). All the proceedings before Income-tax authorities are judicial proceedings for purposes of section 196 of the Indian Penal Code, 1860, and fall within the meaning of sections 193 and 228 of the Code. An income-tax authority shall be deemed to be a Civil Court for the purposes of section 195 of the Criminal Procedure Code, 1973.

10. Disclosure of information regarding assesseees [Section 138]: If a person makes an application in accordance with Rule 113 of the Income-tax Rules, 1962 to the Chief Commissioner or the Commissioner of Income-tax in the prescribed form for obtaining any information relating to any assessee in respect of any assessment year, the Commissioner may, if he is satisfied that it is in the public interest, furnish the information. His decision in this regard cannot be called into question. Nevertheless, the Government may, having regard to practice and usage customary or otherwise, and any other relevant factors, direct that no information or documents shall be furnished or produced by a public servant in respect of such matters relating to a particular class or classes of assesseees except to certain authorities which may be specified. It would be observed that, under section 138, the Commissioner can make a disclosure on the basis of an application made to him; he cannot volunteer to give the information. Further, the Board has been empowered to furnish or cause to be furnished any information relating to any assessee in respect of assessment under the Income-tax Act, 1961, to any office or authority or body performing any function under any law relating to the imposition of any tax, duty or cess or dealings in foreign exchange in all cases where the Board considers such information necessary for the purpose of enabling the officer, authority or body to perform his or its functions under that law. This power of disclosure of information can as well be exercised by any other Income-tax authority specified by the Board by general or special order in this behalf. It will also be open to the Central Government to notify any officer, authority or body performing functions under any other law and on such notification, the Board or any other income-tax authority may furnish or cause to be furnished similar information relating to any assessee to the officer, authority or body concerned.

Various types of Assessment under Income Tax Act, 1961 (Amended by Finance Act, 2016)

Every Person, who is earning, which is chargeable to tax, has to furnish his return of income to the Income Tax Department. After filling of return of income, the next step is the processing of income tax return by the Income Tax Department. The income tax department examines the return of income and specifies any correction, if any. The process of examination of the return of the Income Tax Department is called "Assessment". Assessment includes re-assessment and best judgment assessment under section 147 and 144 respectively. We will discuss each type of assessment in detail in this article.

Types of Assessment

Under Income Tax Act, 1961, there are four types of assessment as mentioned below:

1. Self assessment –u/s 140A
2. Summary assessment –u/s 143(1)
3. Scrutiny assessment –u/s 143(3)
4. Best Judgment Assessment –u/s 144
5. Protective assessment Re-assessment or Income escaping assessment –u/s 147
6. Assessment in case of search –u/s153A

Self assessment

Before submitting returns assessee is supposed to find whether he is liable for any tax or interest. For this purpose this section has been introduced in Income tax act. Where any tax is payable on the basis of any return required to be furnished under section 139 or section 142 or section 148 or section 153A, after deducting:

- i. Advance tax Paid, if any
- ii. TDS/TCS
- iii. Relief
- iv. MAT credit

Then assessee shall pay tax & interest before furnishing return and proof of such payment will be accompanied with return of income.

Summary assessment

Assessment under section 143(1) is like preliminary checking of the return of income. Under this section, Income tax department sent intimation u/s 143(1) in which comparative Income Tax computation [i.e. as provided by Tax payer in Return of Income and as computed u/s 143(1)] is

sent by Income Tax Department. At this stage no detailed scrutiny of the Return of Income is carried out. At this stage, the total income or loss is computed after making the following adjustment (if any), namely-

- i. Any arithmetical error in the return,
- 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);
- 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 under section 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID, or section 80-IE, if the return is furnished beyond the due date specified under section 139(1);
- 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

Assessment u/s 143(1) can be made within a period of one year from the end of financial year in which the return of income is filed.

Scrutiny Assessment

Scrutiny assessment refer to the examination of a return of income by giving opportunity to the assessee to substantiate the income declared and the expenses, deduction, losses, exemptions, etc. claimed in the return with the help of evidence. During the course of scrutiny, the assessing officer gets opportunity to conduct enquiry as he deemed fit from the assessee and from third parties. The exercised is aimed at ascertaining whether the income in the return is correctly shown by the assessee and whether the claims for deductions, exemptions etc. are factually and legally correct. If any omission, discrepancies, inaccuracies, etc. comes light to as a result of examination, the assessing officer makes his own assessment of the assessee's taxable income after taking into consideration all the relevant facts. These assessments are made under section 143(3) of the income tax act.

The case selected for Scrutiny Assessment can be of by two types - i.e. (1) Manual scrutiny cases and (2) Compulsory Scrutiny cases.

(1) Manual scrutiny cases

Following can be reason for manual scrutiny case:

* Not filing Income Tax Return

* Declaring lesser income compared to earlier year or Declaring more loss compared to earlier year.

*Mismatch in TDS credit between claim and 26AS.

- *Non declaration of exempt income.
- *Claiming large refunds in return of Income.
- *Taking double benefit due to change in Job.
- *High Value Transaction (as reflected in AIR).

(2) Compulsory Scrutiny cases

The following cases are compulsorily selected for scrutiny:

- * Cases involving addition in the earlier assessment year in excess of Rs. 10 lakhs on a substantial and recurring question of law or fact which is confirmed in appeal or is pending before an appellate authority may come under compulsory scrutiny.
- * Cases involving addition in an earlier year on the issue of transfer pricing in excess of Rs. 10 crore or more on a substantial and recurring question of law or fact which is confirmed in appeal or is pending before an appellate authority.
- *Computer Added Scrutiny Selection (CASS): cases are also being selected under CASS on the basis of broad based selection filters. List of such cases shall be separately intimated in due course by DGIT (system) to the jurisdictional concerned. The cases for this purpose are mostly selected through the process of computer assisted scrutiny selection (CASS) and there is no element of subjectivity in this process.
- *Cases in respect of which specific and verifiable information pointing out tax evasion is given by Government Department/ Authorities. The Assessing Officer shall record reasons and take prior approval from Pr. CCIT/CCIT/Pr. DGIT/DGIT concern before selecting such a case for scrutiny.
- *Cases where order denying the approval u/s 10 (23C) of the Act or withdrawing the approval already granted has been passed by the competent authority, yet the assessee found claiming tax exemption under the aforesaid provision of the Act.

There can be two types of scrutiny assessment i.e. (1) Limited scrutiny assessment and (2) Complete Scrutiny Assessment. When case is selected for Limited scrutiny assessment, assessing officer can ask only the details regarding the reason behind the selection of any specific matter. However, in case of Complete Scrutiny Assessment, Assessing officer can ask complete details of transaction reflecting in the return of the income.

Best Judgment Assessment

Section 144 of Income tax act, 1961 speaks about Best Judgment Assessment. In the best judgment assessment, an assessing officer makes an assessment based on his best reasoning. Assessee should neither be dishonest in his assessment nor have a vindictive attitude.

There are two types of Best Judgment Assessment

a. **Compulsory best judgment assessment:** It is done when assessing officer finds that there is an act amounting to non co-operation by the assessee or where assessee is found to be a defaulter in supplying information to the department.

b. **Discretionary best judgment assessment:** It is done in cases where assessing officer is dissatisfied with the authenticity of the accounts given by the assessee or where no regular method of accounting has been followed by the assessee.

The process of Best Judgment Assessment is applied in conformity with the Principle of Natural justice. As per the provision of Section 144 of the Income Tax Act, 1961, the Assessing officer is supposed to make an assessment of the income of an assessee to the best of his Judgment in the following cases:

* If the person fails to make return u/s as required 139(1) and has not made a return or a revised return under sub-section (4) or (5) of that section; or

* If any person fails to comply with all the terms of a notice under section 142(1) or fails to comply with the direction requiring him to get his account audited in terms of section 142(2A); or

* If any person after having filed a return fails to comply with all the terms of a notice under section 143(2) requiring his presence or production of evidence and documents; or

* If the Assessing officer is not satisfied about the correctness or the completeness of the accounts of assessee or if no method of accounting has been regularly employed by the assessee.

In the case of best judgment assessment, an assessee has a right to file an appeal u/s 246 or to make an application for revision u/s 264 to the commissioner.

One should also keep in view the following

The best judgment assessment can only be made after giving the assessee an opportunity of being heard. Such opportunity shall be given by issue of a notice to the assessee to show cause why the assessment should not be completed to the best of his Judgment and that opportunity for hearing will not be necessary where notice u/s 142(1) already been issued. Protective assessment

Protective assessment

Though there is no provision in the income tax act authorizing the levy of income tax on a person other than whom the income tax is payable, yet it is open to the 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.

In making a protective assessment, the authorities are merely making an assessment and leaving it as a paper assessment until the matter is decided (as to whom the asset owned by) one way or another. Furthermore, a protective order of assessment can be passed but not a protective order of penalty must, however be noted that while protective assessment is permissible, a protective order for recovery is not permissible.

Re-Assessment (or) Income escaping assessment

Re-assessment is carried out if the Assessing officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year.

Scope of assessment u/s 147

The objective of carrying out assessment u/s 147 is to bring under the tax net, any income which has escaped assessment in original assessment. Here, Original assessment means an assessment u/s 143(1) or 143(3) or 144 and 147 (as the case may be).

Procedure of assessment u/s 147

* For making assessment u/s 147, the assessing officer has to issue notice u/s 148 to the taxpayer and has to give him an opportunity of being heard.

* If the Assessing officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, then he may, subject to provisions of section 148 to 153, assess to re-assess such income and also other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceeding under this section. He is also empowered to re-compute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned.

* Items which are the subject matters of any appeal, reference or revision cannot be covered by the Assessing officer under section 147.

Time limit for completion of assessment under section 147

As per section 153 (2), assessment u/s 147 shall be made within 9 month from the end of the financial year in which notice u/s 148 was served.

Time limit for issuance of notice under section 148

*Notice u/s 148 can be issued within a period of 4 years from the end of the relevant assessment. If the escaped income is likely to amount Rs. 1,00,000 or more and certain other condition satisfied, then notice can be issued up to 6 years from the end of the relevant assessment year.

* In case of escaped income relates to any assets (including financial interest in any entity) located outside India, notice can be issue up to 16 years from the end of the relevant assessment year.

Notice u/s 148 can be issued by AO only after getting prior approval from the prescribed authority mentioned in section 151.

Assessment in case of search or requisition

Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003,

The Assessing Officer shall –

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b) in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

(b) Assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made.

Note: Sec. 153A contemplates issue of notice for 6 years preceding the search but not for the year of search or requisition and thus no return is required to be filed for the year of search u/s 153A. Only regular return u/s 139 is to be filed.

Time limit for completion of assessment u/s 153A/153C: [153B]

In case of person searched: 153A

- a. 21 months from the end of the financial year in which last of the authorization for search u/s 132 or requisition u/s 132A was executed.
- b. Similar time limits shall apply in respect of the year of search also.

In case of any other person: 153C

As provided in above clause (a) or clause (b) or 9 months from the end of the Financial Year in which Books of accounts or documents or assets seized/requisitioned are handed over to the AO having jurisdiction over such person; whichever is later.