



DTRTI NEWSLETTER

Issue No.23/Chennai

November 09, 2018

TRAINING NETWORK RELATED NEWS



Shri A.L.Venkataraman, PS, inaugurated the course for stenographers at MSTU, Chennai



Smt. V. Vijaya, PS, delivering the valedictory address during the last day of the Induction course for Stenographers at MSTU, Chennai

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தக்காங்கு நாடித் தலைச்செல்லா
வண்ணத்தால்

ஓத்தாங்கு ஒறுப்பது வேந்து

- குறள் 561

He is a king who having equitably examined (any injustice which has been brought to his notice), suitably punishes it, so that it may not be again committed.

செய்த குற்றத்தை தக்கவாறு ஆராய்ந்து மீண்டும் அக் குற்றம் செய்யாத படி குற்றத்திற்குப் பொருந்துமாறு தண்டிப்பவனே அரசன் ஆவான்.

TOPIC FOR THE WEEK – DRAFTING OF ASSESSMENT ORDERS

Drafting an Assessment Order

The DOs

1) Fill in ITNS-65 clearly and correctly

(i) Name of the assessee: Write the full name.

If the assessee is an HUF, write the name of the Karta

In the case of a deceased assessee, write the name(s) of the legal heir(s)

In the case of a company, indicate if it is a domestic company or a foreign company

In the case of a domestic company, indicate if it is a Public limited Company or a Private Limited Company

(ii) Complete Address : Invariably give the complete postal/ mailing address of the assessee

(iii) Mention the PAN of the assessee

(iv) Mention Ward/Circle

(v) Status: Mention the professional status of the person as per s.2(31) (i.e) whether Individual, HUF, Company, Firm, AOP/BOI/Local Authority or Artificial Juridical Person

(vi) Method of accounting: Mention the method as per S.145 (ie) whether cash method or mercantile method

(vii) Mention Assessment year

(viii) Mention the previous year

(ix) Mention the nature of Business/Profession/any other source of income

(x) Mention the dates on which the hearings took place

(xi) Mention the date of the order

(xii) Mention the section and sub-section under which the assessment is made, i.e., S.143(3), S.143(3) r.w.s.147, S.144, S.144 r.w.s.147 or either S.143(3) or S.144 r.w.s.250/254/263

(2) Introduce the assessee with minimum factual details: for eg., if the assessee is an individual, name and style in which the business is carried on, if it is a firm, names of the partners. Also introduce the nature and scope of the business or profession carried on by the assessee and/or its other sources of income

(3) Mention the date on which the return of income or the revised return of income was filed. State why the revised return was filed. Mention the variation between the original and the revised return. State the heads of income under which the income has been admitted in the return or the revised return. Mention special deductions or exemptions if any, claimed.

(4) If it is an assessment under section 143(3), state the reasons for selection, mode of selection viz., under CASS, as per the action plan norms, or with the previous approval of the Chief Commissioner of Income tax.

(4A) State when the notice under section 143(2) was served on the assessee: Invariably it should be stated if notice has been served within 6 months from end of the financial year in which the return was filed.

Mention also the dates on which notices u/s.142(1) and other letters/questionnaires were issued/served. State briefly the requisitions made vide the notices u/s.142(1) and the other letters/questionnaires and also if there was any failure on the part of the assessee in complying with such requisitions.

(4B) If it is a reassessment, mention the reasons for reopening the assessment, whether sanction was taken from the higher authority, wherever necessary. Mention the date on which the notice u/s.148 was issued and served. Mention the date on which the return of income was filed in compliance to the notice issued u/s.148. State if the assessee asked for supply of the reasons for re-opening. State whether the reasons thus sought were supplied to the assessee. State whether after receiving the reasons, the assessee raised any objection, and if so, briefly mention the objections & state when a speaking order meeting such objection was passed.

(5) Mention the dates on which the hearing(s) took place. Give the name(s) of the authorized representative(s) who appeared for the hearings. Mention about the power of attorney filed by the AR(s). Briefly state the requirements conveyed during the course of the assessment proceedings and the extent to which the same were complied with.

(6) If the assessment is sought to be made u/s.144, mention the non-compliances on the assessee's part viz.,

(a) Failure to file a return of income u/s.139(1) or 139(4).

(b) Failure to comply with all the terms of a notice u/s.142(1)

(c) Failure to comply with a direction issued u/s.142(2A) or

(d) Having made a return, failure to comply with all the terms of a notice u/s.143(2)

(7) If the books of accounts are proposed to be rejected, clearly state the reasons for such rejection, such as-

(a) Assessee's books of accounts are incomplete or incorrect or assessee failed to follow the method of accounting regularly employed by him or

(b) The assessee failed to follow the accounting standards notified by the Government.

(8) Proceed to determine income head wise viz., Salary, House Property, PGBP, Capital Gains and Other Sources

(8.1) Under each head, if there is more than one source, determine income under each source separately, although under the same head.

(8.2) On any issue in respect of which addition or disallowance is intended to be made, take care to incorporate the following

a) the points involved in the issue

b) questions raised on these points

c) assessee's submissions on each point

d) reasons for non-acceptance of such submissions

e) your findings

(8.3) Discussion regarding non-acceptance of the assessee's submissions must invariably include the following

- a) Clearly mention the errors and discrepancies noticed on facts.
- b) Draw inference from such errors and discrepancies
- c) Highlight the inadequacy or incorrectness of the assessee's submissions.
- d) Bring out the contrary facts, i.e., facts which disprove the assessee's claim/submissions
- e) If the assessee's claim is legally inadmissible, state the legal position clearly
- f) Distinguish the case-laws, if any, relied upon by the assessee on facts to show that they are not relevant
- g) Discuss the applicable case-laws, and
- h) Draw your conclusion

(8.4) Wherever enquiries have been made state if and when the results of such enquiries were communicated to the assessee by way of giving him an opportunity for rebutting such results.

(8.5) Wherever statement has been recorded from the assessee, furnish a copy of the statement to the assessee. Mention the deposition made in the nutshell, inferences drawn therefrom, and the assessee's replies thereto. Wherever statement has been recorded from the witness, state if the assessee was given opportunity to cross-examine such witness.

(9) Under each head, give a finding as above source-wise and quantify the addition/disallowance before moving to the other source under the same head, or to another head and so on.

(10) At the end, i.e., after computing the net total income under each head, compute the gross total income which is the aggregate of the net total incomes.

(11) If any income is sought to be clubbed u/s.64, state all the relevant facts as well as the reasons for clubbing in the body of the order itself. This will add upto the gross total income.

(12) From the gross total income thus arrived at, allow admissible deduction claimed, if any, under Chapter VIA. Accordingly, arrive at the taxable income.

(13) If any interest is chargeable u/s.234A, 234B, 234C & 234D, clearly mention it in the assessment order. Give reasons for such charging.

(14) State in the body of the assessment order the penalty proceedings which are being initiated and the reasons for such initiation. Specify the charge against the assessee.

(15) Then proceed to compute the tax & interest payable.

(16) If the net value is a refund, grant interest u/s.244A only if (i) the same is more than 10% of the tax on the total income and also if (ii) the delay in the issue of refund is not attributable to the assessee

(17) Ensure that ITNS 150 is sent along with the order

(18) Take care to dispatch the order on or before the limitation date.

(19) Ensure service of the order on the assessee as expeditiously as possible.

(20) Make it a point to communicate the facts/information relating to other assessees/persons, over whom you do not have jurisdiction, to the concerned AOs so as to enable them to initiate necessary proceedings in such other assessee's/person's cases or, wherever appropriate, to make protective assessments.

The DON'Ts

(1) Don't forget to ensure that you have jurisdiction over the case in respect of which assessment is going to be made by you.

(2) Don't forget that for initiating a valid assessment proceedings, a notice u/s.143(2) will have to be **served** on the assessee within 6 months from the end of the financial year in which the return of income was filed.

(3) Don't forget to record the reasons for the purpose of reopening an assessment u/s.147. Without reasons, the courts would not go to the merits of the case.

(4) Don't forget to record the failure of the assessee to file a return of income or to disclose fully and truly all the material facts relevant to the assessment, if the said assessment is sought to be reopened by invoking the proviso to S.147 i.e., after 4 years from the end of the AY being reopened.

(5) Don't refuse to supply the reasons for reopening the assessment to the assessee if he asks for such reasons after filing a

return in pursuance to the notice u/s.148.

(6) Don't forget to pass a speaking order for meeting the objections, if any, raised by an assessee against the reopening, separately, before the assessment orders are passed.

(7) Don't commit the mistake of hurrying and closing the re-assessment proceedings before passing a speaking order mentioned above.

(8) Don't make an assessment without giving the assessee reasonable opportunity of being heard.

(9) Don't make an assessment u/s.144 without giving the assessee a proposal to make a best judgment assessment if a notice u/s.142(1) had not been issued earlier.

(10) Don't use any material or evidence against the assessee without giving him due opportunity for rebuttal/cross examination.

(11) Don't reject books of accounts without specifically invoking S.145(3) and without clearly stating the reasons for doing so.

(12) Don't reject an affidavit merely by saying that the same is not reliable or is a self serving one.

(13) Don't reject any averment made in an affidavit without cross-examining the deponent of the affidavit.

(14) Don't make an addition merely on the basis of assumption or hearsay.

(15) Don't make a disallowance u/s.37, without bringing out facts and evidences, to show that the expenditure, were not

incurred, partly or fully, in the course of or for the purpose of business.

(16) Don't allow an expenditure which is for a purpose prohibited under the law. In this connection go through the explanation to S.37(1).

(17) Don't apply a section which is not applicable, eg., 44AD/44AE. If you are referring to any such section, only for adopting the profit margin prescribed therein, by treating the same as reasonable profit, state so explicitly.

(18) Don't disallow a claim which has not been made in the return.

(19) Don't make an addition merely in the computation of income and without giving any reason in the body of the order.

(20) Don't make estimate based disallowances or additions without specifying the basis for the estimate.

(21) Don't forget to discuss in the body of the order the reasons for clubbing income u/s.64 as and where applicable.

(22) Don't ignore the orders of the Hon'ble Supreme Court and of the Jurisdictional High Court.

(23) Don't forget to distinguish the order of the other High Courts if you are not following the same.

(24) Don't ignore the order of the Hon'ble ITAT without distinguishing the same on facts or in law.

(25) Don't ignore the directions given by the Tribunal in its order in the case of set-aside assessments.

(26) Don't use in the assessment order

vague and ambiguous words and phrases, such as "the assessee has probably suppressed his receipts", "it appears that expenditure has been inflated", "it is unlikely that the disclosed receipts are correct", "it is likely that gross profit has been reduced" etc.

(27) Don't make an addition or disallowance on the basis of mere probabilities or unfounded generalizations.

(28) Don't make agreed additions.

(29) Don't mention in the order that the assessee has agreed to the addition, subject to no penalty. If there is any condition, the same must be met as well as rejected in the body of the order itself since the statute does not envisage or permit a conditional addition.

(30) Don't routinely use the words "covered issue" without ensuring that the facts are pari-materia.

(31) Don't give a finding regarding claims which are found acceptable and with reference to which additions and disallowances are not being made.

(32) Don't give a finding that books of accounts are found to be in order if no addition or disallowance is being made on the basis of books of accounts.

(33) Don't give the assessee, in the assessment order, a conduct certificate by using epithets such as "law abiding citizen, honest tax payer" etc.

(34) Don't forget to mention about charging of interest and initiation of penalty proceedings in the body of the order. Clearly mention whether penalty

u/s.271(1)(c) was initiated for concealment or for furnishing inaccurate particulars.

(35) Don't forget to ensure that ITNS-150 must invariably be enclosed to the order and form part of it.

(36) Don't forget that wherever you have made an assessment, it will be virtually impossible to reopen it u/s.147 or for the

CIT to interfere u/s.263 since the presumption will be that you have applied your mind to the case and any different finding on the same set of facts will be considered (by the Appellate Authority) as mere change of opinion.

(37) Don't forget that you are making an assessment which is almost final, i.e., unless appealed against, and which is binding on the department. (to be continued...)

(The above content is an extract from the concise publication titled "Sharpening the Cutting Edge-Handbook for Assessing Officers", an initiative of the Knowledge Management Group of the CCIT(CCA), Pune. For complete content, readers may refer the publication.)

FROM THE EDITOR'S DESK- MEASURES FOR AUGUMENTING REVENUE

INTRODUCTION

The ability of the department to optimize tax collection on high net worth individuals and profitable corporates would help the country to rely less on indirect taxation. The said step is progressive in nature and perceived as a sign of development. It is in this direction that the department's scarce resources are to be deployed. Therefore, emphasis laid down in Action Plan relating to deepening of tax base/passing quality assessment orders precisely strategize this important area of work.

STRATEGY

Following are the steps suggested which help the range heads and assessing officers to contribute positively in this direction which will directly augment revenue and help in achieving the budgeted revenue targets.

Identify the top cases in the range on the parameters not only on income disclosed for taxation for the purpose of in depth scrutiny or for developing the case for conducting surveys but also on few other

parameters as discussed below.

DRILLING DOWN

Following are some of the parameters suggested for identifying potential cases for this purpose.

On the basis of turnover: This parameter is the most popular and often applied by the departmental officers quite successfully.

On the basis of tax deducted as source: Rates at which tax is to be deducted as source for various transactions are arrived at after careful study of transactions by the department and quantum of tax deducted at source is a fertile parameter to identify potential targets for investigation as often it is found that huge refunds are claimed in such cases.

On the basis of claim of deduction/exemption claimed on income returned: The experience of department in the past showcased the fact that major tax evasion scams have surfaced in this area. Bogus refunds scams

u/s 80G, 80DDB, 80IA/80IB, bogus claims of weighted deduction u/s 35 are few such examples.

On the basis of share capital/share application money invested in business: This parameter is again one of the most relied upon ones by the departmental officers in making out a case u/s 68 quite successfully.

On the basis of unsecured loans/sundry creditors in the balance sheet: As discussed in the earlier case.

On the basis of gap between the GP and NP shown, higher the gap more potential for investigation: This parameter could be most successfully applied in cases where the sales turnover cannot be suppressed as the receipts are subject to deduction of tax at source.

On the basis of exempt income claimed: Businessmen resort to laundering of the

money through this route and tax returns are used as a means to plough unaccounted money in to the business. Agricultural income and exempt income u/s 10 (bogus capital gain on shares) etc., fall under this category.

CONCLUSION

The role of the departmental officers in the above discussed area cannot be overemphasized as effective work in this area not only helps in achieving the budgeted revenue targets but also in bringing the equity in tax administration. While the credit for major tax collections are attributed to the advance tax collections and tax deducted/collected at source, the effective work put in by the departmental officers as suggested would promote more voluntary compliance in the segment of tax payers who are prone to under report the income.

SOLUTION TO LAST WEEK'S CROSSWORD-(Prevention of Money Laundering Act)

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R ⁷			A					I		S			G		N		C ⁸
E			L		F ⁹	I	V	E		P			U		T		O
P ¹⁰	U	B	L	I	C			N		I			L		E		N
O			A					T		C			A		R		T
R			C			J ¹¹		D		I	P ¹²		T		M		R
T			C			U		U		O	R		O ¹³	N	E		A
I ¹⁴	M	P	O	U	N	D		E		U	E		R		D		C
N			U			I		D		S	D				I		T
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E	M ¹⁵	A	T	E	R	I	A	L		C			T ¹⁶		R		N
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		P ²⁰	R	O	C	E	E	D	S	O	F	C		R	I	M	E