

Rule of Evidence under Income-tax Act, 1961

Assessment, Penalty and Prosecution
proceedings

(with special reference to alleged suspicious
transactions in shares – Penny Stocks)

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(Part - I) - 1. Assessment

- -Natural Justice .

“The evidence brought on record without the knowledge of the assessee and used against him without giving him an opportunity to rebut it offends the principles of Natural Justice. There must be something more than bare suspicion to support the assessment.”

(Dhakeshwari Cotton Mills Ltd v. CIT (1954) 26 ITR 775 (SC))

- Evidence - How to be Judged

“Science has not yet invented any instrument to test the reliability of the evidence placed before a Court or a Tribunal. Therefore the Courts and the Tribunals have to judge the evidence before them by applying the test of Human Probabilities. Human minds may differ as to reliability of a piece of evidence, but that sphere decision of the final fact finding authority is made conclusive by law.”

(CIT v. Durga Prasad More (1971) 82 ITR 540 (SC)
(546, 547))

- Evidence Act- Income-tax Act

- *“The rigour of the rules of evidence contained in the Evidence Act, was not applicable but that did not mean that the taxing authorities were desirous of invoking the principles of the Act in proceedings before them, they were prevented from doing so.”*

(Chuharmal v. CIT (1988) 172 ITR 250 SC)

- Surrounding circumstances and test of applying human probabilities


“Though an apparent must be considered real until it was shown that there were reasons to believe that the apparent was not real in the case where a party relied on self serving recitals in document, it was for that party to establish the truth of those recitals. Taxing authorities were entitled to look into the surrounding circumstances to find out the reality of the recitals.

(Sumati Dayal v CIT (1995) 214 ITR 801 (SC))

2. Provisions in the Income-tax Act, 1961, where a specific reference is made of Evidence Act:

- S. 131. Power regarding , discovery , production of evidence , etc
- S. 132. Search and seizure.
- S. 132(4A). Presumption – Books of account , documents etc .
- S.132A. Power to requisition books of account , etc .

- S. 132B .Application of seized or requisitioned assets.
- S. 133A. Power of survey .
- S.136. Proceedings before income-tax authorities to be judicial proceedings.
- S. 142. Enquiry before assessment .
- S.143(3). Assessment .

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- S. 250(4).CIT(A)- Rule 46A- Additional evidence .
 - S.254(1): Appellate Tribunal- ITAT ,R, 18, 29 .
 - S.278E. Presumption as to culpable mental state.
 - S.292C.Presumption as to assets, books of account, etc.

3. Provisions of Evidence Act 1872 - Relevance to Income-tax proceedings

- S.3: Interpretation clause, Document, Evidence , Electronic records
- S.4 May presume shall presume conclusive
- S. 5 :Evidence may be given of facts in issue and relevant facts
- S.17 .Admission defined

- S.21. Proof of admission against persons making them , and by or on their behalf.
- S. 24: Confession caused by inducement , threat or promise , when irrelevant in criminal proceedings
- S.34:Entries in books of accounts including those maintained in electronic form when relevant
- S. 35: Relevancy of entry in public record or an electronic record made in performance of duty.

- S.45. Opinions of experts
- S. 45-A. Opinion of Examiner of Electronic evidence .
- S.61 . Proof of contents of documents
- 62. Primary evidence
- S.63 . Secondary evidence
- S.65-A . Special provisions as to evidence relating to electronic record.

- S.65-B. Admissibility of electronic records .
- S.74. Public documents
- S.75 . Private documents .- All other documents are private .
- S.76. Certified copies of public documents
- S.91 . Evidence of terms of contracts , grants and other dispositions reduced to from documents.
- S.92. Exclusion of evidence of oral agreement.

- S.94. Exclusion of evidence against application of document to existing facts .-
- S. 106. Burden of proving fact especially within knowledge .
- S. 114. Court may presume existence of certain facts.
- S.126. Professional communications

- S. 129. Confidential communications with legal advisers
- S.131 .Production of documents or electronic records which another person , having possession , could refuse to produce .-
- S.132. Witness not excused from answering on ground that answer will criminate
- S. 147. When witness to be compelled to answer.-

4. ASSESSMENT PROCEEDINGS- SPECIFIC ISSUES

4.1. EVIDENTIARY VALUE OF AN “ADMISSION” IN THE RETURN OF INCOME:

- ✘ Duty of the Assessing officer to assess the income as per the provisions of law
(Circular No. 14(XL – 35) 1955 dated 11th April 1955)
(CIT v. Mahalakshmi Sugar Mill Co. (1986) 160 ITR 920 (SC)(928))

✘ Assessment was completed as per return - Application u/s 264 to apply correct provision of law (Danny Denzongpa v. CIT (2010) 46 DTR 129 / 235 CTR 449 / 194 Taxman 415 (Bom.)(HC))

✘ Addition ground in the second round of appeal is allowed .

(Asian Paints Ltd v. Dy CIT (ITA No. 3289/Mum/2015 dt.11-01 2017 “K”, www.itatonline.org)

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- ✘ If a particular income is not taxable under the Income-tax Act, it cannot be taxed on the basis of estoppel or any other doctrine - No estoppel in law against a party in a taxation matter .

(CIT v. V.MR.P. Firm , Muar ,(1965) 56 ITR 67 (SC)
(74))

(Nirmala L. Mehta v.CIT(2004) 269 ITR 1 (Bom)
(HC) (11))

4.2.NATURE OF ASSESSMENT PROCEEDINGS

- ✘ Quasi-Judicial

(M. Chockalingam & M. Meyyyappan v. CIT (1963) 48 ITR 34 (SC) (40))

- ✘ Opportunity given must be reasonable –

(Tin Box Co v. CIT (2001) 249 ITR 216 (SC) (2018-19))

- ✘ No obligation to make maximum profits –

(CIT v. A.Raman& Co (1968) 67 ITR 11 (SC) (17)),

(CIT v. Calcutta Discount Co .Ltd (1973) 91 ITR 8 (SC))

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- ✘ Commercial expediency must be tested in the context of current social -economic thinking and to be decided from businessman's point of view

(Shahzad Nand& Sons v CIT (1977) 108 ITR 358 (SC) (366))

(CIT v Sales Magensite(P) Ltd (1995) 214 ITR 1 (Bom) (HC) (6))

4.3. EVIDENTIARY VALUE OF AFFIDAVIT IN ASSESSMENT PROCEEDINGS

- ✘ Affidavits are not included in the definition of evidence in section 3 of the Evidence Act and can be used in evidence only if the Court permits it to be so used for sufficient reasons
(*Sudha Devi v.M.P. Narayanan* AIR 1988 SC 1381)
- ✘ The rejection of an affidavit by an assessee is not justified unless the deponent has either been discredited in cross examination or has failed to produce other supporting evidence when called upon to do so-
(*Mehta Parikh & Co v. CIT* (1956) 30 ITR 181 (SC)(187)),
(*CIT v. Silver Streak Trading Pvt. Ltd.* (2010) 326 ITR 418(Delhi.) (HC) (419))

- ✘ If an affidavit is not properly verified , it cannot be admitted in evidence as it is no affidavit in the eye of law –
(A.K.K. Nambiar v. UOI AIR 1970 SC , 652 (654))
(State of Rajasthan v. Sindhia film Exchange .AIR 1974 (Raj) 31)
- ✘ Condonation of delay was rejected on the ground that the Affidavit was not in accordance with law. R.10 of ITAT Rules, 1963
(Kunal Surana v. ITO (Mum.) (Trib.) www.itatonline.org)
- ✘ Filing of false affidavit is an offence under section 192 of the Indian penal code .-Perjury
(Mohan Singh v late Amar Singh VII Supreme laws Today 305)

✘ Affidavit cannot be relied upon as the said Kedar Prasad has signed in Hindi and it does not appear from the body of the affidavit that test of this document in English was explained him by anybody”

(Abdul Rashid v. Calcutta Municipal Corporation ,AIR 1900 Cal 37)

4.4. ENTRIES IN BOOKS OF ACCOUNT -S.34 OF THE INDIAN EVIDENCE, ACT, 1872

- ✘ Even correct and authentic entries in books of account cannot without independent evidence of their trust worthiness, fix a liability upon a person.
(Central Bureau of Investigation v . V.C. Shukla (1998) 3 SCC 410 (433) (434))

✘ Entries in books of account, including those maintained in electronic form – Investigation could not have been directed in case of high public functionaries on basis of legally inadmissible evidence in form of loose papers, more so with respect third parties.

(Common Cause (A registered society) v UOI (2017) 394 ITR 220 (SC))

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- ✘ Mere entry on loose sheet of paper not supported by actual cash cannot be considered to be sufficient evidence to treat the same as cash credits under s.68 .

(S.P Goyal v . Dy. CIT (2002) 82 ITD 85 (TM))

4.5. RIGHT TO CROSS EXAMINATION

- ✘ Not only it is the duty of the Department to provide copies of statements or reports , but the assessee is entitle to seek right of cross examination .

(State of Kerala v. K. T. Shaduli Yusuff Etc.(1977) 39 STC 478 (SC))

- ✘ -Evidence which is used against the assessee must be provided to the assessee and also an opportunity to confront the same should be given permitting cross- examination

(Kishan Chand chellaram v CIT (1980) 125 ITR 713 (SC) (720))

✘ if some document is relied on against the assessee to assess him to a high rate of tax , the documents shall be disclosed to him. It cannot be withheld

(Capricorn Shopping complex v. ITO (1996) 218 ITR 721 (Ker) (HC) (723))

✘ Accused can ask only relevant document and not all the documents.

(Kanwar Natwar Singh v. Director of Enforcement (SC)
(www.itatonline.org)

✘ A reassessment made on the basis of entries in the records of an auctioneer ,without giving the assessee an opportunity to cross-examine the auctioneer , has been held violating the principles of natural justice and the same was not valid and was liable to be quashed –

(Chaman Lal Dhingra v CIT (1995) 212 ITR 365 (SC) (366))

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- ✘ Failure to give the assessee the right of cross-examine witness whose statements are relied upon results in breach of principles of natural justice. It is a serious flaw which renders the order a nullity.

(Andaman Timber Industries v CCE (2015) 127 DTR 241 / 281 CTR 241 (SC))

- ✘ S.68 :Cash credits -The denial of opportunity of cross examination goes to root of the matter and strikes at the very foundation of the assessment order and renders it vulnerable.

(H. R. Mehta v. ACIT (2016) 138 DTR 217 (Bom.)(HC);

www.itatonline.org)

4.6. S.131 :DUTY OF AO TO ENFORCE OF WITNESS

- ✘ Duty of AO to enforce of witness - Civil Procedure Code , 1908, O. XVI, R. 10.
(Food Corporation of India v . Provident Fund Commissioner (1990) 1 SCC 68 (SC) (71))
- ✘ S.68.Cash credits -
(Nathuram Premchand v CIT (1963) 49 ITR 561 (All) (HC)(564))
(MunnnalalMurlidhar v. CIT (1971) 79 ITR 540 (All) (HC) (543))

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- ✘ Commission for examination of witness, etc.
 - ✘ Rule 19 of Order XVI of the Civil Procedure Code -
Summons can be issued only where witness resides
within 500kms
(Jaganatha Sastry v. SurathambalAmmal (1923) 44
MLJ 202 (Mad) (HC))
 - ✘ Witness does not have right to be represented by
counsel when his statement is recorded.
(V.Datchinamurthy and another v. Asst . DIT (IT) (1984) 149 ITR 341 (Mad) (HC)(372))

✘ S. 131: Income-tax authorities – Powers – Discovery –
Summons

The fact that other five parties did not give any evidence would not allow the Assessing Officer to draw the inference that the assessee is a trader and that the assessee could not be held responsible for the non-appearance of the other 5 traders.

(Anis Ahmad & Sons v. CIT (2008) 297 ITR 441 (SC))

4.7. S.282: SERVICE OF NOTICE

- ✘ RPAD -Refusal to accept-Deemed service
(CST v. Sunil Haribhau Pote (Bom) (HC)
:www.itatonline.org)
- ✘ Speed Post –Not returned deemed to have served .
(Milan Poddar v. CIT (2012) 211 Taxman 403/(2013)
90 DTR 80/ 260 CTR 170 (Jharkhand)(HC))
- ✘ Service of notice by Whatsapp - E-Mail
(Kross Television India Pvt. Ltd. v. Vikhyat Chitra
Production (Bom) (HC) :www.itatonline.org)

4.8. S.69 OF THE INCOME-TAX ACT AND S. 110 OF THE EVIDENCE ACT

- ✘ Currency notes - Onus is on the person who is in possession of money to show that he is not the owner of the same .
(CIT v. K.T.M.S.Mohamod (1997) 228 ITR 113 (Mad) (HC))
- ✘ Watches were seized from the bed room of the assessee. - Onus to prove is on the assessee based on the criteria laid down in Evidence Act.
(Chuharmal v.CIT(1988) 172 ITR 250 (SC) (255))

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- ✘ S.69- AIR information-Addition cannot be made .
(S. Ganesh v. ACIT (2011) TIOL 87 ITAT-Mum. 701 / (2011) 42-B. BCAJ (March P. 33)(Mum.)(Trib.))
 - ✘ S. 14 :The Indian Partnership Act
(ITO v. Amit Vijay Kulkarni ITA No. 1597 /PN/ dt. 25-03-2015)
 - ✘ Addition on the basis of seized document print out from Blackberry mobile digital was held to be not justified .
(ACIT v. Katrina Rosemary Turcotte (Katrina Kaif) (2017) 160 DTR 113 /190 TTJ 681 (Mum) (Trib))

4.9. S.292C: PRESUMPTION AS TO ASSETS, BOOKS OF ACCOUNTS

- ✘ Harish Textile Engineers Ltd. v. DCIT (2015) 379 ITR 160 (Bom.)(HC)
- ✘ CIT v. Sonal Constructions (2013) 359 ITR 532 (Delhi) (HC) (543)

4.10. RE-ASSESSMENT

- ✘ GKN Driveshafts (India) Ltd v. DCIT (2003) 259 ITR 19 (SC)
- ✘ Officer has to wait four weeks
Asian Paint Ltd v .Dy.CIT (2008) 296 ITR 90 (Bom) (HC)
- Allana cold storage Ltd v. ITO (2006) 287 ITR 1 (Bom) (HC)

5. Search and seizure

- Though the search and seizure may be illegal the evidence collected can be used against the assessee .
(Pooran Mal v. Director of Investigation (1974) 93 ITR 505 (SC))
(Pratap Singh v Director of enforcement (1985) 155 ITR 166 (SC))
- Search and seizure - Statement on oath -Evidentiary value
(Instruction No. F. No. 286/2/2003 - IT(Inv) dt. 10-3-2003 (April 2003 AIFTP Journal P. 25))
(Letter No F.No.286/98/2013-IT (INV.II)], dated 18-12-2014.)

- Addition cannot be made merely on the basis of statement .
(Chetnaben J. Shah v. ITO (2016) 140 DTR 235 (Guj.)(HC))
(Kailashben Manharilal Chokshi v. CIT (2010) 328 ITR 411
(Guj.)(HC))
- Severe strictures passed to condemn the illegal practice of the
Dept of collecting undated cheques from taxpayers after
search/survey without even quantifying the extent of duty
evasion.
(Digipro Import & Export Pvt. Ltd. v. UOI (Delhi) (HC),
www.itatonline.org)

- There is no requirement in law that evidence in support of it cannot be produced by the assessee only at the time of seizure has been made and not during the assessment proceedings.

(CIT v. Rakesh Ramani (2018) 256 Taxman 299 (Bom.) (HC))

- Statement u/s 131 can be taken at residence .
(DCIT (Inv.) v. Prakash V. Sanghavi (2016) 236 Taxman 176 (Karn.)(HC))

6.Survey

- Addition cannot be made only on the basis of statement .

(CIT vs. S. Khadar Khan & Son (2012) 254 CTR 228/(2013) 352 ITR 480 (SC))

(Paul Mathews Sons vs. CIT (2003) 263 ITR 101 (Ker.)(HC))

(PCIT v. Texraj Realty P. Ltd. (Guj)(HC), www.itatonline.org)

(CIT v. IibsInfonetPvt. Ltd. (2017) 394 ITR 538 (Delhi) (HC))

- Additions can be made .

(Dr. Dinesh Jain v. ITO (2014) 363 ITR 210
(Bom.)(HC))

(PCIT v. Avinash Kumar Setia (2017) 395 ITR
235/153 DTR 57 /248 Taxman 106 (Delhi) (HC))

(PART - II) - SUSPICIOUS TRANSACTIONS IN SHARES – PENNY STOCKS

- A mere suspicion that builders in the country are probe to take a part of the sale amount in cash is a no ground to accept the story of payment of Rs 4,0000 .

(Bhandari Construction Company v Narayan Gopal Upadhye(2007) 3 SCC 163)

- Penny stocks – CBDT has letter dt 16-03 -2016 – Reopening of assessment to tax bogus capital gains / loss in penny stocks – Scam by tax payers .www.itatonline.org

Favourable Decisions

Broad principles

- S. 69. Unexplained investment under section 69 - sale of the shares - penny stock – Appellate Tribunal deleted the addition - order of Tribunal was confirmed by High Court SLP of revenue was dismissed .(Civil) No(s).20146/2012 dt. 27-1-2014 (ITA 456 of 2007 dt. 07/09/2011)
(CIT .v. Mukesh Ratilal Morolia (SC))
(CIT .v. Mukesh Ratilal Morolia (Bom) (HC))
(Mukesh Ratilal Morolia v. CIT (2006) 6 SOT 247 (Mum) (Trib))

- DMT account and contract note showed credit / details of share transactions

(CIT v ShyamR.Pawar (2015) 229 Taxman 256
(Bom) (HC))

- Merely because appreciation in value the capital gains cannot be assessed as income from undisclosed sources

(PCIT v. Prem Pal Gandhi (2018) 401 ITR 253
(P & H) (HC))

- If the DMAT account and contract note show details of the share transactions and the AO has not proved the transactions to be bogus, the capital gains earned on the said transactions cannot be treated as unaccounted income .The fact that the broker was tainted and violated SEBI regulations would not make assessee's transactions bogus (ITO v. Arvind Kumar Jain HUF (Mum) (Trib), www.itatonline.org)
- Failure to give opportunity of cross examination - Addition was deleted (Kamla Devi S. Doshi v. ITO (2017) 57 ITR 1 (Mum.) (Trib))

- A transaction evidenced by payment/receipt of share transaction value through banking channels, transfer of shares in and from the D-mat account, etc cannot be treated as a bogus transaction.
(Sunil Prakash v. ACIT (Mum.) (Trib.); www.itatonline.org)
- The transaction cannot be treated as bogus until and unless a finding is given that the shares were acquired by the assessee from the person other than the broker claimed by the assessee. The enquiry conducted by the Investigation Indore is not a conclusive finding of fact in view of the fact that the shares were duly materialized & held in the d-mat account. Merely supplying of statement to the assessee at the fag end of the assessment proceedings is not sufficient to meet the requirement of giving an opportunity to cross examine. The AO cannot proceed on suspicion without any material evidence to controvert or disprove the evidence produced by the assessee.

- In order to treat the capital gains from penny stocks as bogus, the Dept has to show that there is a scam and that the assessee is part of the scam. The chain of events and the live link of the assessee's action giving her involvement in the scam should be established. The Dept cannot rely on alleged modus operandi & human behavior and disregard the evidence produced by the assessee.

(Navneet Agarwal v. ITO(Kol)(Trib), www.itatonline.org)

- 31000% increase in value of shares over 2 years is highly suspicious but cannot take the place of evidence. The addition cannot be made based on generalizations. Evidence collected from third parties cannot be used against the assessee without giving him a copy and an opportunity to rebut the same .(ITA No. 2394/kol/2017, dt.27.06.2018)(AY. 2014-15)

(Prakash Chand Bhutoria v. ITO (Kol)(Trib),

www.itatonline.org)

- The fact that the Stock Exchanges disclaimed the transaction is irrelevant because purchase and sale of shares outside the floor of Stock Exchange is not an unlawful activity. Off-market transactions are not illegal. It is always possible for the parties to enter into transactions even without the help of brokers. Therefore, it is not possible to hold that the transactions reported by the assessee were sham or bogus.

(ACIT v. Vineet Sureshchandra Agarwal (Ahd.) (Trib.); www.itatonline.org)

- Failure to provide a copy of the statement and an opportunity to cross-examination, the addition is bad in law - Direct evidences relating to sale / purchase, brokers note cannot be disregarded.

(Sunita Jain (Smt.) v. ITO (Ahd.) (Trib.) : www.itatonline.org)

(Rachna Sachin Jain (Smt.) v. ITO (Ahd.)
(Trib.); www.itatonline.org)

- The fact that the stock is thinly traded and there is unusually high gain is not sufficient to treat the long-term capital gains as bogus when all the paper work is in order. The revenue has to bring material on record to support its finding that there has been collusion/connivance between the broker and the assessee for the introduction of its unaccounted money.

(Dolarri Hemani v. ITO (2017) 183 TTJ 433 (Kol.)
(Trib.), www.itatonline.org)

○ Sale of shares cannot be assessed as income from undisclosed sources when the broker and stock exchange confirmed the genuineness of transaction.

- PCIT v. Ramniwas Ramjivan Kasat (2017) 248 Taxman 484 (Guj.) (HC)

- CIT v. Sadhana Jain (Smt.) (2014) 97 DTR 1 / 224 Taxman 28 (Mag.) (All.) (HC)

- CIT v. Udit Narain Agrawal (2013) 81 DTR 63 / 213 Taxman 178 (Mag.) / 255 CTR 102 (All.) (HC)

- CIT v. Anupam Kapoor (2008) 166 Taxman 178 / 212 ITR 491 / 299 ITR 179 (P&H) (High Court)

- Meenu Goel v. ITO (2018) 94 taxmann.com 158 (Delhi) (Trib)

- ITO v. Aarti Mittal (Smt.) (2014) 149 ITD 728 (Hyd) (Trib.)

- ITO v. Indravadan Jain (HUF) ITA No. 4861/Mum./2014 dt. 27-5-2016
- CIT v. Jamna Dev Agarwal (Smt.) (2010) 328 ITR 656 (Bom.) (HC)
- CIT v. Vivek Mehta (2012) 204 Taxman 177 (P& H)(HC)
- CIT v. Mahesh chandra G. Vakil(2014) 220 Taxman 166 (Guj)(HC)
- CIT v. Sumitra Devi (Smt.) (2015) 229 Taxman 67 (Raj) (HC)
- CIT v. Himani M. Vakil (2014) 221 Taxman 140 (Guj.) (HC)
- Baijnath Agarwal v. ACIT [2010] 40 SOT 475 / 133 TTJ 129 (Agra) (Trib)
- Farrah Marker (Ms) v. ITO (Mum) (Trib)
- Arvind Mehta v. ITO (Mum) (Trib)
- DCIT v. Anil Kaniya (Mum) (Trib)
- Sudhanshu Suresh Pandhare v. ITO (Mum)(Trib)
- Surya Prakash Toshniwal HUF v. ITO (Kol.) (Trib)
- CIT v. Bhagwati Prasad Agarwal(Kol) (Trib)
- Late Roshan Raja Through Legal v ITO (Mum) (Trib)
- Pavillion Commercial Pvt Limited v. ITO (Kol) (Trib)
- DCIT v Sunita Khema(Kol) (Trib)
- Rajkumar Agarwal v. ITO (Kol) (Trib)

- Loss on penny stock – Held to be allowable.

(PCIT v. Rungta Properties (P) Ltd (2018)
403 ITR 234 (Cal) (HC) (244))

(CIT v. Carbo Industrial Holdings Ltd. (2000)
244 ITR 422 (Cal) (HC))

Penny stocks – Additions confirmed

- Assessee had indulged in a dubious share transaction meant to account for the undisclosed income in the garb of long term capital gain. The gain has accordingly to be assessed as undisclosed credit

(Sanjay Bimalchand Jain v. P CIT (Bom) (HC);
www.itatonline.org/(2018) 89 taxmann.com 196)

- Despite documentary evidence and broker's confirmation, genuineness of penny stock transactions has to be determined on the basis of 'preponderance of human probabilities'. If assessee is unable to explain 'intriguing' facts and circumstances, genuineness of transaction cannot be accepted . Addition was confirmed as cash credits

(ITO v. Shamim M. Bharwani (2015) 118 DTR 268/170
TTJ 238 (Mum.)(Trib.))

- AO can assess on consideration of material available on record, surrounding circumstances, human conduct, preponderance of probabilities and nature of incriminating information/evidence available on record. (Haresh Win Chaddha v. DIT (Del.) (Trib.) (www.itatonline.org)

(Usha Chandresh Shah v. ITO (Mum.)(Trib.); www.itatonline.org)
- Shell companies – Failure to produce lenders - Addition was held to be justified

(Pavan kumar M. Sanghvi v. ITO (2017) 165 ITD 260/187 TTJ 32 /152 DTR 201 / 59 ITR 189 (SMC) (Ahd.) (Trib.))

(Affirmed by High Court, Pavankumar M. Sanghvi v. ITO (2018) 301 CTR 265 (Guj) (HC))

(SLP rejected 10250 /2018 dt. 1-05 -2018)

- S. 68. Cash credits -The assessee did not furnish the address of the said company; the fact that the assessee could not adduce evidence in support of his claim of purchase of shares; that the assessee failed to adduce any evidence regarding transfer of shares in his name; and that the assessee has failed to even furnish the name and address of the person to whom the shares were sold.

(ITO v. Rajiv Aggarwala (2004 89 TTJ 1095 (Delhi) (Trib)) (Referred in Baijnath Agarwal v. ACIT [2010] 40 SOT 475 (Agra)) (Trib)

- The assessee is indulging in non-genuine and bogus capital gains from transaction of sale and purchase of shares of M/s Shiv Om Investment and Consultancy Limited which was penny stock company and pre-dated contract notes were issued by the Brokers to manipulate and introduce long term capital gains in favour of the assessee which are exempt from tax u/s 10(38) of the Act leading to escapement of income from taxation.

(Ratnakar M. Pujari v. ITO (Mum) (Trib))

- Ratio of judgement must be ascertained by the Court /Tribunal before applying the same .

(CIT v. Sun Engineering works (1992) 198 ITR 297 (SC))

- Two judgements of Jurisdictional High Court which are contrary to each other and latter judgement is delivered without referring earlier judgment. Tribunal can prefer either of the two judgements which is better in point of law than in point of time

(Amar Singh Yadav v. Shanti Devi AIR (1987) Pat 191)

(CIT v. Madukant M. Mehta (1981) 132 ITR 159 (Guj)
(HC))

- If there are contrary decisions of different Benches of the Tribunal , decision which is favourable to the assessee may be followed

(CIT v. Vegetable Products Ltd (1973) 88 ITR 192(SC))

- If ratio is irreconcilable make application to refer the matter to special Bench.

- Scheme of Merger approved by the court - Department cannot contend that amalgamation is with an intention to avoid tax.

(ACIT v. TVS Motors Co. Ltd. (2011) 128 ITD 47 (Chennai) (Trib.) (57))

(Vodafone Essar Gujrat Ltd. v. Department of Income Tax (2013) 353 ITR 222 (Guj.) (HC))

(Approved by Supreme Court (2015) 373 ITR 525 (SC))

SHARE CAPITAL – FAVOURABLE DECISIONS

- Action in hands of shareholders.
 - CIT v. Lovely Exports Pvt. Ltd. (2008)319 ITR 5(St)/ 216 CTR 195 / 6 DTR 308 (SC)

- Failure to produce confirmation- Addition cannot be made
 - Earthmetal Electricals (P) Ltd. v. ITO(SLA (Civil) No. 21073/2009, CA No. 618 of 2010 dt 30-7-2010.) (SC)
 - CIT v. Stellar Investments Ltd (2000) 164 CTR 287/(2001) 251 ITR 263 / 115 Taxman 99 (SC)

- V. R. Global Energy Pvt. Ltd. v. ITO (Mad)(HC),
www.itatonline.org
- CIT v. Jalan Hard Coke Ltd. (2018) 95 taxmann.com 330 (Raj)
(HC) (SLP of revenue is dismissed, (2018) 257 Taxman 91 (SC))
- CIT v Russian Technology Centre Pvt. Ltd. (2018) 300 CTR 501
(Delhi)(HC)
- PCIT v. Claridges Hotels (P) Ltd (2018) 300 CTR 501 (Delhi) (HC)
- CIT v. Oriental International Co. P. Ltd. (2018) 401 ITR 83 / 301
CTR 145 / 162 DTR 170 (Delhi) (HC)
- Associated Transrail Structure Ltd v. ACIT (2017) 397 ITR 573 (Guj)
(HC)
- PCIT v. Apeak Infotech (2017) 397 ITR 148 (Bom.) (HC)
- CIT v. Orchid Industries P. Ltd. (2017) 397 ITR 136 (Bom.) (HC)
- CIT v. Green Infra Ltd. (2017) 392 ITR 7/292 CTR 233/146 DTR
262/78 taxmann.com 340 (Bom.) (HC)
- CIT v. N.C. Cables Ltd (2017) 391 ITR 11 (Delhi) (HC)

- CIT v. Gagandeep Infrastructure Pvt. Ltd (2017) 394 ITR 680/247 Taxman 245 / (2018) 166 DTR 221 / 302 CTR 493 (Bom.) (HC)
- CIT v. Likproof India P. Ltd. (2017) 390 ITR 377 / 291 CTR 493/245 Taxman 76/145 DTR 321 (Bom.) (HC)
- CIT v. Softline Creations P. Ltd. (2016) 387 ITR 636 (Delhi)(HC)
- CIT v. SVP Builders (India) Ltd. (2016) 238 Taxman 653 (Delhi)(HC)
- CIT v. K. C. Pipes P. Ltd. (2016) 386 ITR 532 (P&H)(HC)
- CIT v. Al Anam Agro Foods (P.) Ltd. (2013) 219 Taxman 125(Mag.) (All.)(HC)
- CIT v. Kamna Medical Centre (P) Ltd. (2013) 217 Taxman 16 (Mag.) (All.)(HC)
- CIT v. Bhaval Synthetics (2013) 217 Taxman 23 (Raj.)(HC)
- CIT v. Peoples General Hospital Ltd. (2013) 216 Taxman 320 (MP)(HC)
- CIT v. LDK Shares & Securities (P) Ltd. (2012) 71 DTR 371 (All.)(HC)
- CIT v. LDK Builders (P) Ltd. (2012) 71 DTR 371 (All.)(HC)
- CIT v. STL Extrusion (P) Ltd. (2011) 333 ITR 269 / 53 DTR 97 (MP)(High Court)
- CIT v. Jay Dee Securities and Finance Ltd. (2013) 350 ITR 220 / 214 Taxman 62(Mag.) (All.)(HC)
- Hindustan Inks & Resins Ltd. v. Dy. CIT (2011) 60 DTR 18 (Guj.)(High Court)

- S.147: Reassessment-After the expiry of four years-Information from investigation wing -No averment of failure on part of the assessee to disclose fully and truly all material facts necessary for assessment – Reassessment is held to be not valid [S.148]
(PCIT v. Light Carts P. Ltd (2018) 404 ITR 574 (All) (HC))
- S. 147 :Reassessment – After the expiry of four years-Share application money-Notice was quashed and guidelines were laid down and the Revenue is directed to adhere to them.
(Sabh Infrastructure Ltd. v. ACIT (2017) 398 ITR 198 (Delhi) (HC))

- S.147:Reliance on statements of third parties who have not been subjected to cross examination is not permissible. Voluminous documents produced by the assessee cannot be discarded merely on the basis of statements of individuals contrary to such public documents - Reassessment was held to be not valid

(PCIT v. Paradise Inland Shipping Pvt. Ltd. (2018) 400 ITR 439 (Bom) (HC))

(SLP of revenue is dismissed PCIT v. Paradise Inland Shipping Pvt. Ltd. (2018) 255 Taxman 160 (SC))

AGAINST DECISIONS

- Konark Structural Engineering (P.) Ltd. v. Dy. CIT (2018) 254 Taxman 184 (Bom.)(HC)
(SLP rejected (2018) 257 Taxman 262 (SC))
- Seema Jain v. ACIT(2018) 406 ITR 411 (Delhi) (HC)
- J. J. Development Pvt. Ltd. v. CIT (Cal)(HC), www.itatonline.org
- Rick Lunsford Trade and Investment Ltd. v. CIT (2016) 385 ITR 399 (Cal.)(HC)
SLP of assessee is rejected Rick Lunsford Trade & Investment Ltd. v. CIT (2017) 245 Taxman 43 (SC)
- CIT v. N.R. Portfolio (P.) Ltd. (2013) 214 Taxman 408 / 87 DTR 162 / 263 CTR 456 (Delhi)(HC)
- CIT v. Neelkanth Ispat Udyog (P) Ltd. (2013) 81 DTR 214 (Delhi)(HC)
- CIT v. Nipun Builders and Developers Pvt. Ltd. (2013) 350 ITR 407 / 82 DTR 145 / 214 Taxman 429 / 256 CTR 34 (Delhi)(HC)

- Bhola Shankar Cold Storage Pvt Ltd. v. Jt. CIT (2004) 270 ITR 487 (Cal.)(High Court)
- S.147: Reassessment-After the expiry of four years- Shell companies-Search of third person revealing that transaction disclosed by Assessee during original assessment was bogus. (Sairam Commercial Pvt. Ltd. v. UOI (2018) 406 ITR 281 (All) (HC))
(Aradhna Estate Pvt.Ltd. v. DCIT (2018) 404 ITR 105 (Guj) (HC))
(Ankit Agrochem (P.) Ltd. v. JCIT (2018) 253 Taxman 141 (Raj)(HC))

(PART –III) - PENALTY - CONCEALMENT

- If the court finds that language of a taxing provision is ambiguous or capable of more meanings than one, then the court has to adopt the interpretation which favours the assessee, more particularly so where the provision relates to the imposition of penalty

(CIT v. Vegetable Products Ltd (1973) 88 ITR 192 (SC) (195))

- Finding in assessment proceedings are relevant but not conclusive in penalty proceedings.

(Anantharam Veerasinghaiah & Co v. CIT (1980) 123 ITR 457 (SC) (462))

- Filing inaccurate particulars of income - Inadvertent - Human error - Bonafide mistake - Levy of penalty held to be not leviable
(Price Waterhouse Coopers Pvt. Ltd. v. CIT (2012) 348 ITR 306 / 253 CTR 1 / 77 DTR 153 / 211 Taxman 40 (SC))
- Surrender of income -Voluntary surrender of income does not absolve the assessee from penalty due to concealment
(Mak Data (P) Ltd v CIT (2013) 358 ITR 593 (SC))
(CIT v. Shri Hiralal Doshi (2016) 383 ITR 19(Bom) (HC))
(Uttam Value Steels Ltd v ACIT (ITA No .3622/Mum/ 2016 dt 22-05-2017)
(PCIT v. Dr. Vandana Gupta (2018) 163 DTR 361/ 301 CTR 460 (Delhi)(HC))
(Khandelwal Steel & Tube Traders. v. ITO (2018) 256 Taxman 305 (Mad) (HC))
(Girraj Mehta v. CIT (2016) 382 ITR 385 / 133 DTR 182 / 285 CTR 205 (Raj.)(HC))

- Not specifying the charge -Levy of penalty is not justified
(CIT v. SSA's Emerald Meadows(2016) 242 Taxman 180 (SC); www.itatonline.org)
(CIT v. Samson Perinchery (2017) 392 ITR 4 (Bom.) (HC))
(Muninaga Reddy v. ACIT (2017) 396 ITR 398 (Karn) (HC))
(PCIT v. Baisetty Revathi (Smt) (2017) 398 ITR 88 (AP) (HC)
(CIT v. S.M. Construction (2015) 233 Taxman 263 (Bom.)(HC))
(CIT v. Zoom Communication (P) Ltd. (2010) 327 ITR 510 (Delhi)(HC)
is distinguished.)
- Revised return -Penalty is justified
(CIT v. Sangameshwara Associates (2012) 345 ITR 396 / 71 DTR 287 /
208 Taxman 311 / 253 CTR 87 (Karn.)(HC))
- Ignorance of law caused by complicated provisions amounts to “bona fide
belief”, deletion of penalty held to be justified
(CIT v. Hans Christian Gass (Bom.)(HC) www.itatonline.org)

- Quantum confirmed – Levy of penalty is not justified
(Rama Natha Gadhavi v. ITO (2017) 393 ITR 590/79
taxmann.com 152 (Guj) (HC))
(SLP of revenue was dismissed (2017) 392 ITR 44 (St.))
- Quantum admitted by High Court-
If the quantum appeal is admitted by the High Court, it means
that the issue is debatable and penalty cannot be levied
(CIT v. NayanBuilders and Developers (2014) 368 ITR 722
(Bom))
(CIT v. Advaita Estate Development Pvt. Ltd. (Bom.) (HC);
www.itatonline.org)

(Part – IV) - Offences and Prosecutions

- ⦿ S. 275A to 280D deals with Offences under the Income -tax Act
- ⦿ Criminal procedure Code, 1973
- ⦿ Economic offences – No limitation is provided for initiation of proceedings

- ◎ S.278E. Presumption as to culpable mental state

Court shall presume culpable mental state on the part of the accused

(Circular No 469 dt. 23-09-1986 (1986) 162 ITR 21 (St))

- ◎ Constitutional validity is upheld

(Sasi Enterprises v.ACIT (2014) 361 ITR 163 (SC))

(Selvi J. Jayalalithaa v ACIT (2007) 290 ITR 55 (Mad) (HC))

(Selvi J Jayalalitha v. UOI (2007) 288 ITR 225 (Mad) (HC))

- ◎ Presumption can be rebutted but burden is heavy on the accused

(Prakash Nath Khanna v CIT (2004) 266 ITR 1 (SC) (para 12))

Approach of Courts to Economic Offences

- ◎ State of Gujarat v. Mohanlal Jitamalji Porwal & Ors (1987) 2 SCC 364

“ The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused . An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequences to the community”

- ◎ Ram Narain Popli v. CBI (2003) 3 SCC 641

“ ... Unfortunately the last few years , the Country has seen an alarming rise in white -collar crimes which has affected the fibre of the Country's economic structure . These cases are nothing but private gain at the cost of public, and lead to economic disaster”

Procedure followed by the department while launching the prosecution

- ① Income tax manual prescribes the guidelines to be followed while launching the prosecution.
- ② The Assessing Officer on the basis of records of the assessee send the proposal to the respective commissioner
- ③ The Commissioner issues the show cause notice to the assessee.
- ④ If the commissioner is satisfied with the reply of the assessee he may not grant the sanction to file the prosecution. If he grants the sanction the Officer concerned has to launch the prosecution before the court by filing complaint before the competent Court . In Mumbai the competent court is at Bellad Pier .

- ⦿ Opportunity of being heard before giving sanction u/s 279 of the Act.
- ⦿ Act does not provide that the Commissioner has to necessarily afford of hearing before deciding to initiate proceedings
(UOI v Banwari Lal Agarwal (1998) 101 Taxman 508 (SC))
(ACIT v. Vellippa Textile Ltd (2003) 263 ITR 550 (SC) (567, 569))
(MansukhlalVithaldas Chauhan v. State of Gujarat (1977) 7 SCC 622)
(Instruction No 5051 of 1991 dt 7-2-1991 (Guidelines))
- ⦿ If the accused is 70 years of age when the offence was committed
(Pradip Burma v.ITO(2006) 382 ITR 418 (Delhi) (HC))

- ⦿ Initiation of prosecution proceedings during the pendency and before the completion of assessment or during the pendency of Appeal before the appellate authority

(P. Jayappan v. ITO (1984)149 ITR 696 (SC))

(Kalluri Krishna Pushkar v. Dy. CIT (2016) 236 Taxman 27 (AP& T) (HC))

(Bhupen Champak Dalal v. Sandeep Kapur&Anr(2001) 248 ITR 827 (Bom) (HC))

(CIT v. Bhupen Champak Dalal(2001) 248 ITR 830 (SC))

(Naresh Prasad v. UOI (2005) 276 ITR 633 / 143 Taxman 291 (Patna)(HC))

- ⦿ When the appeal is pending before the CIT(A), launching of prosecution is not justified.

(Ramchandran Ananthan Pothe vs. UOI (www.itatonline.org))

Finding of the Appellate Tribunal

- ⊙ When penalty is deleted on merits though the quantum is upheld – Prosecution is liable to be quashed

(K.C.Builderv.ACIT (2004) 265 ITR 562 (SC))

(V. Gopal v. ACIT (2005) 279 ITR 510 (SC))

(ITO v. Nandlal and Co(2012) 341 ITR 646 (Bom) (HC))

(Sashichand Jain & Others v. UOI (1995) 213 ITR 184 (Bom) (HC))

(S.P. Sales Corporation v. S.R. Sikdar(1993) 113 Taxation 203 (SC))

(G.L. Didwania v. ITO (1995) 224 ITR 687 (SC))

(Malti Mishra (Smt.) v. State Of Uttar Pradesh. (2018)401 ITR 327 (All) (HC))

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1996

When penalty is cancelled on technical grounds ,
such as limitation, no application of mind etc-
Prosecution can be initiated

Penalty & Prosecution

- ⦿ Non initiation of penalty does not lead to a presumption that prosecution cannot be initiated (Universal Supply Corporation v. State of Rajasthan (1994) 206 ITR 222 (Raj) (HC))
(A.Y.Prbakar (Karta) v.ACIT (2003) 262 ITR 287 (Mad) (HC) (288))
- ⦿ Penalty initiated and dropped after considering the reply on merits – Prosecution proceedings may have to be quashed .

- ⦿ When quantum appeal is admitted by the High Court, it means that the issue is debatable and penalty cannot be levied.- it cannot be a fit case for initiation of prosecution .

(CIT v. Nayan Builders and Developers (2014) 368 ITR 722 (Bom) (HC))

(CIT v. Advaita Estate Development Pvt. Ltd. (Bom.) (HC); www.itatonline.org)

⦿ S. 276C :Offences and prosecutions - Willful attempt to evade tax – Search and seizure - Failure to pay self assessment tax - Issue of show cause was held to be justified-Petition to quash complaint was dismissed [S. 153A, 276B, 279]
(Neo Corp International Ltd v.PCIT (2017) 292 CTR 91/88 taxmann.com 598 (MP) (HC))

⦿ S. 276C :Offences and prosecutions - Wilful attempt to evade tax – Depreciation on land – A claim in the return which is scrutinised by the auditors and the directors cannot be considered as a mere accounting mistake, hence order of the learned Magistrate is up held .

(Ambience Hospitality Pvt Ltd v.Dy .CIT (2018) 161 DTR 36 (Delhi) (HC))

- ⦿ S. 276C : Offences and prosecutions – Wilful attempt to evade tax – Notice under section 156 for recovering the tax need not be issued before launching prosecution. Existence of other modes of recovery cannot act as a bar to the initiation of prosecution proceedings.

(Kalluri Krishan Pushkar v. Dy. CIT (2016) 236 Taxman 27 / 135 DTR 351 (AP &T)(HC))

- ⦿ S. 276B : Offences and prosecutions - Failure to pay to the credit tax deducted at source -Non-Executive Chairman is not involved In Day-To-Day affairs of company — Managing Director admitting Liability and entering into negotiations with revenue — Prosecution of Non-Executive Chairman is held to be not valid .

(Kalanithi Maran v. UOI (2018) 405 ITR 356/ 256 Taxman 260 / 304 CTR 17/ 168 DTR 385 (Mad)(HC))

- ◎ S. 276CC : Offence and prosecutions – Failure to furnish return of Income – Belated return S. 139(4) -There is a statutory presumption prescribed in section 278E. The Court has to presume the existence of culpable mental state and absence of such mental state can be pleaded by any accused as a defence in respect to the act charged as an offence in the prosecution.

(Prakash Nath Khanna & Another v. CIT (2004) 266 ITR 1 / 135 Taxman 327 / 187 CTR 97 / 180 Taxation 18 (SC))

- ◎ S.276C : Offences and prosecutions – False verification in return – Conviction and sentence confirmed – Liberty to Department to consider application for compounding offence.

(B. Gopi. v. G. Thiyagarajan, ITO (2015) 370 ITR 353 (Mad.)(HC))

- ⊙ S. 276CC : Offences and prosecutions – Failure to furnish return of Income – Filing of return in response to notice under section 148

(R. Inbavalli v. ITO (2010) 48 DTR 276 / 327 ITR 226 / 236 CTR 613 (Mad.)(HC))

- ⊙ S. 276CCC : : Offences and prosecutions – Search cases – Failure to furnish return –Where notice under section 158BC was served on assessee's CA and assessee admittedly had its knowledge but did not file return in response thereto and, hence, criminal proceedings were started against it, Trial Court was not justified in discharging assessee accused on ground that notice under section 158BC was not served on it.

(Y. Rajendra, Dy. CIT v. Khoday Eshwarsa & Sons (2005) 272 ITR 448 / 144 Taxman 629 / 195 CTR 0057 (Karn.)(HC))

- ◎ S.276CC : Offence and prosecutions – Culpable mental state – Failure to furnish return of income –High Court held that since the assessee had not filed return of income timely, it could be prosecuted under section 276CC on presumption that there existed a culpable mental state as onus to prove that delay was not wilful was on assessee and not on department.

(ACIT v. Nilofar Currimbhoy (2013) 219 Taxman 102 (Mag.) (Delhi) (HC))

(Editorial: SLP is granted to the assessee SLA(CRL) No. 3714 of 2013 dated 22-8-2014, Nelofar Currimbhoy v. ACIT (2015) 228 Taxman 57 (SC))

◎ S. 277 : Offences and prosecutions - False statement – Verification – Principal Assessing Officer-Bogus claim of brokerage- Subscribed her signature in profit and loss account and balance sheet of company for relevant assessment year which were filed along with returns- Assessing Officer was justified in naming her as Principal Officer and accordingly she could not be exonerated for offence under S. 277 of the Act.

(Sujatha Venkateshwaran(Mrs) v. ACIT (2018) 257 Taxman 195 (Mad)(HC))

- ◎ S.277A : Offences and prosecutions – Falsification of books – False TDS certificate – Tax practitioner – Refund on the basis of TDS certificates – Respondent had no role in preparing TDS certificates – ITO could not initiate criminal proceedings for commission of offences punishable under IPC.

(T.D. Gandhi, ITO v. Sudesh Sharma (2015) 230 Taxman 572 (P&H)(HC))

- ◎ S. 279 :Offences and prosecutions - Compounding Of Offences — Guidelines fixing compounding fees was held to be valid Application For Compounding twenty years after assessment order and after framing of criminal charges — Determination of compounding fees was held to be valid. Assessee was directed to pay cost of Rs 50000 / .

(Vikram Singh v. UOI (2018) 401 ITR 307 /163 DTR 55/ 301 CTR 439 / 253 Taxman 356 (Delhi) (HC))

- ◎ S. 279 :Offences and prosecutions – Compounding of an offence – No time limit is prescribed-The CBDT has no jurisdiction to demand that the assessee pay a 'pre-deposit' as a pre-condition to considering the compounding application.

(VikramSingh v. UOI (2017) 394 ITR 746/247 Taxman 212 / (2018) 301 CTR 439 (Delhi) (HC))

- ◎ S. 279 : Offences and prosecutions – When High Court has given direction to consider the application for compounding, pendency of appeal against conviction could no longer be a reason for refusing consideration for compounding of offence .

(Government of India, Ministry of Finance, Department of Revenue (CBDT) v. R. Inbavalli (2017) 249 Taxman 476/159 DTR 15 / (2018) 400 ITR 352/301 CTR 225 (Mad.) (HC))

- ◎ S. 279 : Offences and prosecutions - Sanction - Chief Commissioner / Commissioner Compounding - Chief - Court will not compel the Commissioner to compound the offence or interfere unless there is factual or legal malafide

(Punjab Rice Mills v. CBDT (2012) 211 Taxman 203 (Mag.) (P&H) (HC))

- ⦿ S. 276C : Offences and prosecutions – Wilful attempt to evade tax – Successor can continue the proceedings

Where initially the authorization was given to one officer who filed a complaint and, subsequently, he relinquished the office or was transferred, his successor could proceed with the same complaint as a complainant.

(ITO v. Balaji Chit Fund (No. 1) (2003) 264 ITR 428 / (2004) 186 CTR 293 (Mad.)(High Court))

- ⦿ S. 276CC : Offences and prosecutions – Failure to furnish return of income – Karta liable for tax offence of the HUF

Member of HUF cannot be held liable for delay in filing of the return of HUF, though he has participated in the assessment proceedings.

(Roshan Lal v. Special Chief Judicial Magistrate (2010) 322 ITR 353 / (2009) 177 Taxman 341 / 20 DTR 206 (All.)(HC))

⦿ Power of Magistrate to dispense with personal appearance of an accused .When an accused makes application to a Magistrate through his duly authorised counsel praying for affording the benefit of his personal presence being dispensed with ,the Magistrate can consider all aspects and pass appropriate order thereon before proceeding further.

(Bhaskar Industries Ltd v. Bhiwani Denim & Apparels Ltd , AIR 2001 SC 3625 (3629))

◎ S.273A .Waiver of penalties. S.279

If penalty is waived even partly, no prosecution can be launched

◎ S. 276C : Offences and prosecutions – Wilful attempt to evade tax – Benefit of Pardon -If accused makes a full and complete disclosure to get benefit of pardon under section 306 of the Code of Criminal Procedure, 1973, the prosecution under section 276C / 277 should not be allowed to proceed.

(Dipesh Chandak v. UOI (2004) 270 ITR 85 / 140 Taxman 166 / 191 CTR 145 / (2005) 184 Taxation 17 (SC))

Settlement Commission

- ⦿ In an appropriate case, it may be desirable to approach the Settlement Commission. Assessee will get the capitalisation, wavier of penalties, immunity from prosecution and finality of the entire case within 2 years.

◎ Abetment – Liability of chartered Accountant

(Navarathna & Co v. ITO (1987) 168 ITR 788 (Mad) (HC) (790))

Merely preparing returns and statement on the basis of the accounts placed before the Chartered Accountant , the question of abatement or conspiracy does not arise

Check list

1. As far as possible the assessee should not agree for addition with the intention of buy peace or prolonged litigation. Assessing Officer has to make the assessment as per law there cannot be agreed assessment .
2. Chartered accountant or tax consultant should not agree for addition on behalf of client

3. When a statement on oath is taken in the course of assessment or survey or search proceedings it is not advisable for chartered accountants or Tax consultants to sign as witness.

4. As soon as the statement is recorded the assessee must make an application to the authority concerned to furnish the copy of the statement recorded.

5. In case creditors reluctant to appear before the Assessing Officer on the request of the assessee , the Assessing Officer may be requested in writing to issue summons u/s 131 of the Act .

6. If third parties statement is relied on by the Assessing Officer , an application may be made to furnish the copy of the statement and also an opportunity of cross examination.

7. Application may be made at the earliest to provide for copies of documents , impounded , seized, papers , books of account as well as electronic data .

8. If the assessee is not provided sufficient time to furnish the required details an application may be made in writing to provide a reasonable time to furnish the details .

9. If the assessee is not well conversant with English language the assessee may request the authority concerned to take the statement in the language which he understands or ask the authority concerned to explain in the language which he understands .

10. Service of the notice is a condition precedent for making of an assessment . In case the service of notice is not done the objection must be raised at the earliest .

11. In case of reopening of assessment on furnishing the return in response to notice u/s 148, it is desirable to file the return signed by the assessee, instead mere letter by the tax consultant treat the return filed earlier may be treated as return in pursuance of notice u/s 148.

12. Once return is filed in pursuance of notice u/s 148 the assessee should ask the copy of recorded reasons

13. While filing rely to recorded reasons , detailed reply must be filed.
14. Retraction of statement must be done within reasonable time.
15. If the natural justice is violated a specific ground regarding the violation of natural justice must be taken before the first appellate authority .

16. It is not advisable to act on the oral assurance of the Assessing Officer that he will not levy penalty or he will drop the reassessment proceedings .

17. While giving the reply don't write technical objections to the notice ,eg. wrong application of section . you may say not accordance with law

18. While arguing before the CIT(A) don't agree for not pressing the ground on legal on the assurance that he will decide in your favour on merit .

19. While arguing before the Tribunal if you have taken four grounds , make submission in respect of all grounds .

20. If you have succeeded before CIT(A) on merit and the CIT(A) has not decided on law , file an appeal or cross objection in respect of law points urged before the CIT(A) .

21. If certain observation made by the AO, CIT(A) which are contrary to facts file rectification letter and also specific ground before the appropriate authority .If required in the form of affidavit .

22. When ever survey or search is conducted on assessee , unaccounted cash or incriminating documents are found it may be advisable to consider approaching settlement commission.

23. While signing the certificate to the paper book , the professional must be very careful. If wrong certificate is given there could be prosecution for giving wrong certificate

- ◎ 24. It may be desirable to make the ladies who are not well conversant with the business of the firm as a signatories to the return

- ◎ 25. If certain wrong facts are referred in the order , the assessee should be advised to file rectification application before the Assessing Officer / CIT(A) or Tribunal

- ⦿ Considering the tax litigation and time involved it is desirable to have better tax management without having any adventurous tax planning .

(In Binod Kumar Agarwal v.CIT(2018) 257 Taxman 58 (Cal) (HC)www.itatonline.org)

THANK YOU

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