

GHOST OF DEMONETIZATION: HOW TO DEAL WITH TAX ASSESSMENTS OF CASH DEPOSITED

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Chir Amrit Corporate School

FLASHBACK



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**Pradhan Mantri
Jan-Dhan Yojana
The Largest Financial
Inclusion Scheme**

11.07
crore RuPay
debit cards
issued

12.54
crore accounts
as on 31st
January 2015

Total amount deposited:
₹10.49
thousand crore

Analysis of Penalty 271AAC, w.r.t. 68,69...etc incomes

	Income Returned by Assessee in Return	Income added by officer in assessment
Tax Rate 115BBE	60 %	60%
Penalty – 271AAC	Not apply	10 % of tax on 115BBE
Penalty – 270A	Not apply	Not apply



Flashback



**Pradhan
Mantri
Jan Dhan
Yojana**

**BENAMI TRANSACTIONS
(PROHIBITION)
AMENDMENT ACT, 2016**

Your undisclosed income is a time bomb...

DEFUSE THE TENSION
Declare your undisclosed income under
Income Declaration Scheme, 2016

Income Declaration Scheme, 2016 (popularly known as TDSKI)
Get into opportunity for ALL INDIA... who have not declared
income legally in earlier years. Income declared will be treated
as regular income.

ELIGIBLE INCOME OR ASSETS
Income or assets in the name of assessee or spouse or minor child
or other person who is a resident in India and who has not been
declared in any of the returns filed by the assessee or spouse or
minor child or other person.

DECLARATION PERIOD
Declaration or transfer from 1st Jan 2014 to 31st September 2015.
The maximum liability will be ₹ 25 Crores.

DECLARATION FEE
Declaration fee of ₹ 10000 per ₹ 100 Lakhs of income or assets
declared.

DECLARATION CHARGE
Declaration charge of 10% of the income or assets declared.

DECLARATION TAX
Income tax on the income or assets declared at the rate of 15%.

DECLARATION CREDIT
Credit will be given for the income tax paid in earlier years on the
income or assets declared.

DECLARATION BENEFIT
Income tax on the income or assets declared will be treated as regular
income.

DECLARATION PROCESS
The assessee has to file a declaration form with the Income Tax
Department.

DECLARATION FORM
The declaration form is available on the website of the Income Tax
Department.

DECLARATION FORM
The declaration form is available on the website of the Income Tax
Department.

Income Tax Department



Taxation Laws (Second Amendment) Act, 2016

Flashback

SECTION 115BBE

- Inserted by the Finance Act 2012 w.e.f. 01.04.2013 providing for taxation of income under Sec. 68 to Sec. 69D @ 30% upto A.Y. 2016-17 and 60% from A.Y. 2017-18 whether offered in the return of income or assessed by the AO.
- No deduction, expenditure or allowance to be allowed against such income as per the -
 - Finance Act 2016 from 01.04.2017 prohibits set off of any loss against income u/s. 68 to 69D in computing the income offered in the return furnished u/s. 139.

12

Pradhan Mantri Garib Kalyan Yojana, 2016

Main Features

- Declaration can be made by any person in respect of undisclosed income in the form of cash or deposits in an account with bank or post office or specified entity*.
- Tax, surcharge & penalty totalling up to **49.90%** of the **Undisclosed Income** to be paid.
- Mandatory deposit of **25%** of the undisclosed income to be made in **Pradhan Mantri Garib Kalyan Deposit Scheme, 2016**.
- The deposits are interest free and have lock-in period of four years.

Mode of Making Declaration

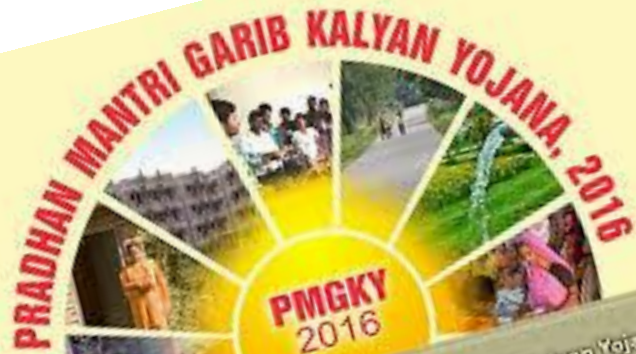
- To be filed **online** at <https://incometaxindiaefiling.gov.in> or in **print** form to jurisdictional Pr. Commissioner/ Commissioner of Income Tax alongwith **proof of payment** of tax etc. and deposit under the Scheme.

Immunity

- Total confidentiality ensured.
- The income declared under the Scheme shall not be taxable under the Income-tax Act, 1961.
- Immunity in respect of declaration made under the Scheme also available under all Acts other than those specified in section 199-O of the Scheme.

*** Non declaration of such undisclosed income will be liable to tax, surcharge and cess @77.25% alongwith penalty and prosecution.**

Information on Black Money can be e-mailed at blackmoneyinfo@incometax.gov.in



All you need to know about the Pradhan Mantri Garib Kalyan Yojana, 2016

Garib Kalyan Yojna

Pay tax, surcharge, penalty & deposit before filing declaration i.e due date & submit proof before filing declaration.

Undisclosed income will NOT be included in total income under IT Act 1961. (so no 115BBE or 271AAC) However Tax, penalty – No refund



Income Declaration Scheme

IDS

आप करें योगदान बढ़ाए अपना सम्मान

DEMONETIZATION SO FAR

PRE-DEMO PERIOD

- VOLUNTARY DISCLOSURE SCHEME, 2016, FA, 2016
- BENAMI LAW MADE EFFECTIVE ON 01.11.2016



8pm on 08.11.2016

POST-DEMO PERIOD

- TAXATION LAW AMENDMENT ACT 2016
- PRADHAN MANTRI GARIB KALYAN SCHEME
- OPERATION CLEAN MONEY DRIVE
- CBDT SOPs AND INSTRUCTIONS
- ASSESSMENTS

DEMONETIZATION SO FAR

S.No	Date/Year of Event	Events
1.	June to September 2016	Income Declaration Scheme, 2016 was introduced by FA 2016
2.	01 st November 2016	The Benami Transactions (Prohibition) Amendment Act, 2016 came into force on 01.11.2016.
3.	08 November 2016	Demonetization
4.	09 November 2016 onwards	Various Notifications by Government and RBI to deal with the situation of demonetization
5.	15 December 2016	Taxation Law Amendment Act got assent of President
6.	17 December 2016	Pradhan Mantri Garibh Kalyan Yojana, 2016 notified effective from 17-12-2016 to 31-03-2017
7.	29 December 2016	Ordinance punishing holding of demonetized currency
8.	31 January 2017	Income Tax Department initiated Operation Clean Money (Swatch Dhan Abhiyan)
9.	21 February 2017	Standard Operating Procedure (SOP) to be followed by Assessing Officers in verification of cash transactions relating to demonetization were laid down by the CBDT.
10.	03 March 2017	CBDT prescribed for templates to be used for issue of notices under section 133(6) of the Income-tax Act, 1961 in appropriate cases, for Online Verification of Cash Deposits.
11.	14 April 2017	General press release with respect to operation clean money.

DEMONETIZATION SO FAR (CONTD.)

S.No	Date/Year of Event	Events
12.	15 November 2017	Standard Operating Procedure (SOP) for issue of notice under section 142(1) in cases related to substantial cash deposit in bank account(s) during demonetization period.
13.	24 November 2017	CBDT has issued a letter regarding some of important issues to be considered while framing scrutiny assessment pertaining to filing of revised/belated return by assesseees, post demonetization.
14.	05 th March 2019	SOP for handling cases related to substantial case deposited during the Demo period in which notice u/s 142(1) has not been complied
15.	09 August 2019	Internal letter was issued with respect to verification check for assistance of AOs and OCM cases and framing of assessment in demonetization related issues.



Taxation Law (Second Amendment) Act, 2016

- Amendment to Section 115BBE- Special rates of tax for deemed income
- Amendment to Section 271AAB – Search Penalty increased to minimum 30%
- Amendment to Section 271AAC – Penalty for Deemed Income
- Chapter XIA inserted “Taxation And Investment Regime For *Pradhan Mantri Garib Kalyan Yojana*, 2016”
- Pradhan Mantri Garib Kalyan Deposit Scheme, 2016 w.e.f. 17.12.2016

Section 115BBE

- Section 115BBE of the Income Tax Act, 1961 ("**the Act**") was amended w.e.f. 01.04.2017 to provide flat rate of 60%, when the total income of an Assessee includes any Income referred to in Section 68, 69, 69A,69B, 69C or 69D
- ☐ Amendment in Finance Act 2016, which provides to calculate a surcharge of 25% on the amount of tax calculated as per Section 115BBE.
- ☐ Effective rate of tax: 77.25% (including Surcharge and Cess)

Section 271AAB

- Section 271AAB of the Act has been amended to provide for the highest rate of penalty in case of search at the rate of 60% in comparison to highest rate of 90% prior to the amendment.

AMENDMENT IN 271AAB PENALTY

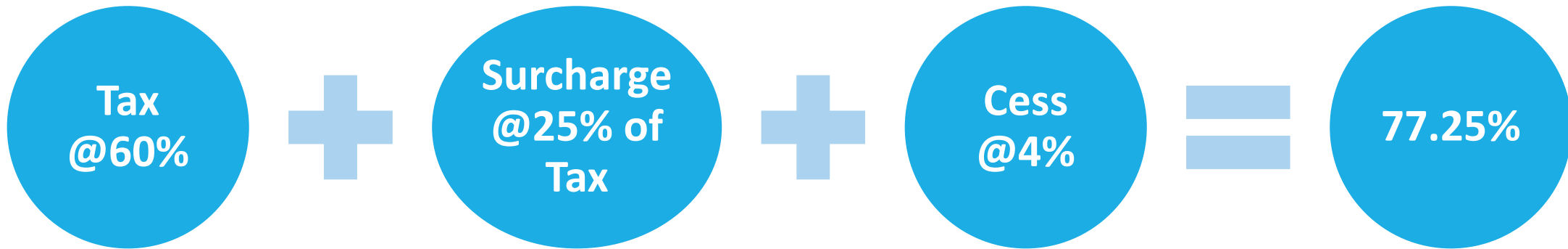
SEARCH CONDUCTED ON OR AFTER 01.07.2012 BUT BEFORE 15.12.2016	SEARCH CONDUCTED AFTER 15.12.2016
A sum computed @ 10% of the undisclosed income of the specified previous year in case assessee admits the undisclosed income in statement u/s 132(4), pays tax and specifies and substantiate manner	A sum computed @ 30% of the undisclosed income of the specified previous year in case assessee admits the undisclosed income in statement u/s 132(4)
A sum computed @ 20% of the undisclosed income of the specified previous year in case assessee does not admit the undisclosed income in statement u/s 132(4) but admits in the ROI	
A sum computed @ 60% of the undisclosed income if not covered in the provisions of clause (a) & (b)	A sum computed @ 60% of the undisclosed income if not covered in the above provisions

Section 271AAC

- Insertion of a new Section 271AAC w.e.f. 01.04.2017 to provide that when the total income determined by the Assessing officer includes any income referred to in Section 68, 69, 69A, 69B, 69C or 69D, the assessee shall in addition to the tax computed under Section 115BBE be liable to pay penalty at the rate of 10% of the tax calculated as per Section 115BBE. However, this penalty is not payable in case such income has been included by the assessee in the return of Income and tax is paid before end of relevant previous year.

EFFECT OF THE AMENDMENTS

- Effective rate of tax as per Section 115BBE would be



- Further, Penalty at the rate of 10% according to Section 271AAC will also be imposed in cases referred to in Section 68,69,69A,69B,69C and 69D of the Act

RETROSPECTIVE TAX ON COMPUTATION U/S 115BBE

SECTION 115BBE PROVIDES FOR TAXES ON THE FOLLOWING

- Cash Credits
- Unexplained Investments
- Unexplained Money
- Investment Not fully Disclosed in Books
- Unexplained Expenditure
- Amount Borrowed or Repaid on Hundi

If assessee included such income in its return

- Then no deduction of expenditure or allowance or set off of any losses

If AO includes such income*

- Then there was no such prohibition*

*Section 115BBE(2) retrospectively amended by FA, 2018 to extend the prohibition in case where such income is added by AO

PRADHAN MANTRI GARIB KALYAN YOJANA, 2016

- This scheme was open from 17.12.2016 till 31.03.2017
- Declaration in respect of only cash or deposits in a bank account.
- Effective rate of tax and penalty:
 - Tax at the rate of 30 percent (Section 199D)
 - Pradhan Mantri Garib Kalyan Cess at the rate of 33% of tax (Section 199D)
 - Penalty at the rate of 10% (Section 199E)
 - Deposit at the rate of not less than 25% of the undisclosed income for 4 years without any interest

YOJANA NOT APPLICABLE

Person in respect to whom an order of detention made under Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974

Prosecution of any offence punishable under

- Chapter IX, XVII of IPC
- Narcotic Drugs & Psychotropic Substances Act, 1985
- Unlawful Activities (Prevention) Act, 1967
- Prevention of Corruption Act, 1988
- **Prohibition of Benami Property Transactions Act, 1988**
- **Prevention of Money Laundering Act, 2002**

Person notified u/s 3 of Special Court (trial of offence Relating to Transactions in Securities) Act, 1992

Undisclosed Foreign Income & Asset Chargeable to Tax under **Black Money (Undisclosed Foreign Income and Assets) and Imposition Act, 2015**

The Specified Bank Notes (Cessation of Liabilities)

Ordinance, 2016

- Promulgated on 30.12.2016
- Old Denomination Notes ceased to be liability of RBI from 31.12.2016 onwards.
- Grace period for certain class of persons.
- Punishment for false declaration with fine upto Rs.50,000 or 5 times of value of notes, whichever is higher.
- Punishment for holding SBN's: Rs.10,000 or 5 times of value of SBN's, whichever is higher.
- Holding allowed:
 - Upto 10 old SBN's
 - Upto 25 old SBN's for the purpose of study, research or numismatics
 - Holding as per direction of Court
- The Specified Bank Notes (Cessation of Liabilities) Act, 2017 received assent of President on 27.02.2017

OPERATION CLEAN MONEY (OCM)



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DATA: OCM DRIVE

Identification of 17.92 lakh persons, who entered into cash transactions that did not appear to be in line with their tax profile

9.46 Lakh persons responded on pre-defined parameters of sources of the cash deposits.

Online queries were raised in 3500 cases

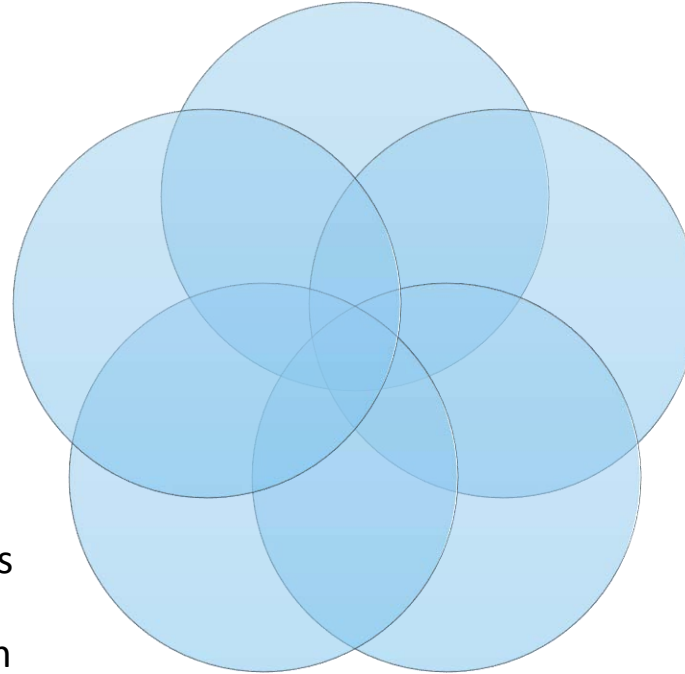
On-line verification was completed in more than 7800 cases

DATA: OCM DRIVE

More than 2,362 search, seizure and survey actions were carried out during 08-11-2016 to 28-02-2017

Detection of undisclosed income of more than Rs.9,334 crore

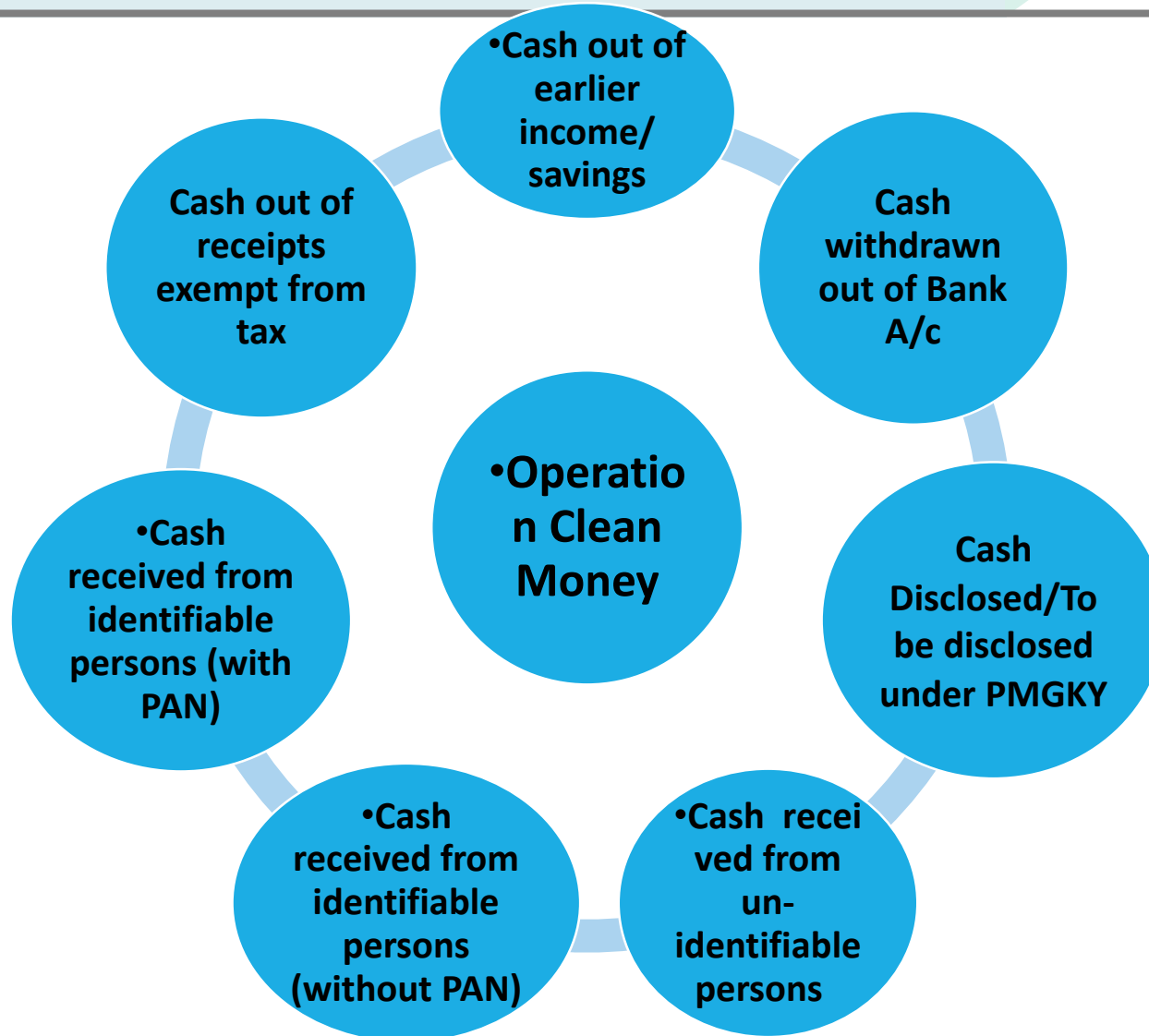
More than 400 cases have been referred by ITD to the Enforcement Directorate and the CBI



Seizure of valuables worth more than Rs.818 crore, which include cash of Rs.622 crore

Surveys have been conducted in more than 3400 cases by Assessment Units

Operation Clean Money: Source of Cash Deposited



HIGH RISK PROFILE CASES IDENTIFIED UNDER OPERATION CLEAN MONEY DRIVE

- A. Businesses claiming cash sales as the source of cash deposits which is found to be excessive compared to their past profile or industry norms;
- B. Large cash deposits made by government or PSU employees;
- C. Persons who have undertaken high value purchases;
- D. Persons who have used shell entities for layering of funds; and
- E. Where no responses were received



LETTER NO. F.NO. 225/391/2017 DATED 24-11-2017

- ❖ CBDT issued directions for **scrutiny assessment in case of revised ITRs** filed post demonetization
- ❖ Revision of Income-tax return (ITR) is allowed **only if any omission or wrong statement** is noticed therein by the assessee. Such omission or wrong statement may have occurred due to a bonafide and inadvertent error or a mistake on part of assessee.
- ❖ However, **post demonetization period, it was found that some of the assesseees tried to build an explanation for cash deposits in their bank accounts by manipulating their books of accounts and filing revised or belated ITRs.**
- ❖ Filing revised or belated ITRs just to build an explanation for cash deposits in bank account becomes questionable and, **therefore, the transaction disclosed in it which are over and above the original return are liable to be taxed under anti-abuse provisions** of the Income-tax Act.

HIGH RISK PROFILE CASES: REVISED/BELATED RETURNS

- Unsubstantiated reduction in closing stock in the revised return vis-a-vis the figures in original return;
- Reporting of higher sales in the revised return;
- Cash-in-hand as on 31-3-2016 or 31-3-2015 was enhanced in the revised return;
- Additional cash inflow claimed to be out of earlier year savings, receipt of loans/advances /gifts/repayments/sale of capital assets;
- In some cases, cash outflow might have been reduced by paying some of the liabilities in cash;
- Significantly lower closing stock as on 31-3-2015 or 31-3-2016 as compared to the earlier years in a belated return;
- Significantly higher cash-in-hand as on 31-3-2016 or 31-3-2015 compared to the preceding year in a belated return.

EXAMPLES OF SUSPICIOUS TRANSACTIONS FOR DEPARTMENT

1. Abnormal jump in the cash sales during the period Nov to Dec 2016 as compared to earlier history.
2. Abnormal jump in percentage of cash sales to unidentifiable persons as compared to earlier history.
3. More than one deposit of specified bank notes in the bank account late in the demonetization period.
4. Non-availability of stock or attempts to inflate stock by introducing fictitious purchases.
5. Transfer of deposited cash to another account/entity which is not in line with earlier history.

SUGGESTED DIRECTIONS FOR VERIFICATION AS PER INSTRUCTIONS ISSUED

1. The claim of enhanced sales may be compared with the Central Excise/VAT returns;
2. Whether the parties to whom additional sales were disclosed have identity, creditworthiness and transaction was genuine or not.
3. Abnormal jump in percentage of cash sales to unidentifiable persons as compared to earlier history.
4. Where the accounts are subjected to tax-audit, whether omission or wrong statement in the original return was pointed out by the audit or not.
5. The source of cash-in-hands of the person who had made payments to the assessee has to be verified carefully
6. The past profile of the concerned assessee should be thoroughly analysed

6. Where as a result of enquiries/investigations it emerges that figures in the revised/related return are fudged, the figure of manipulated receipts/sales/stock etc. is liable to be taxed as a cash credit under section 68 and not merely on net profit basis;
7. Any undisclosed expenditure detected after reduction of cash-in-hand by the assessee may be verified carefully
8. Unaccounted income so assessed in scrutiny assessment is liable to be taxed at a higher rate without any set off of losses, expenses etc. under section 115BBE of the Act;
9. In the scenario pertaining to Wealth tax returns of earlier years, it should be examined whether there is an attempt to build cash-in-hand or any other asset so as to justify deposit of cash, post-demonetisation

STATUTORY DISCLOSURE

- ❖ Notification No. G.S.R. 308(E) dated 30th March 2017 issued by MCA required the **companies to disclose the Details of Specified Bank Notes (SBN) held and transacted during the period from 8th November, 2016 to 30th December, 2016**
- ❖ Notification No. G.S.R. 307(E) dated 30th March 2017 issued by MCA **required the auditor to incorporate in its audit report** the following :
 - “(d) whether the company had provided requisite disclosures in its financial statements as to holdings as well as dealings in Specified Bank Notes during the period from 8th November, 2016 to 30th December, 2016 and if so, whether these are in accordance with the books of accounts maintained by the company.”*
- ❖ Disclosure of cash deposited during the period was required to be made in the ITR forms if the cash deposited was Rs.200,000 or more.

COMPLETION OF ASSESSMENT(S) IN DEMO CASES

31.12.2018

- Search conducted on or before 31.03.2017

31.03.2019

- Non-compliant assessees covered by SOP dated 05.03.2019

31.12.2019

- 143(3) assessment
- Search conducted between 01.04.2017 & 31.03.2018

30.09.2020

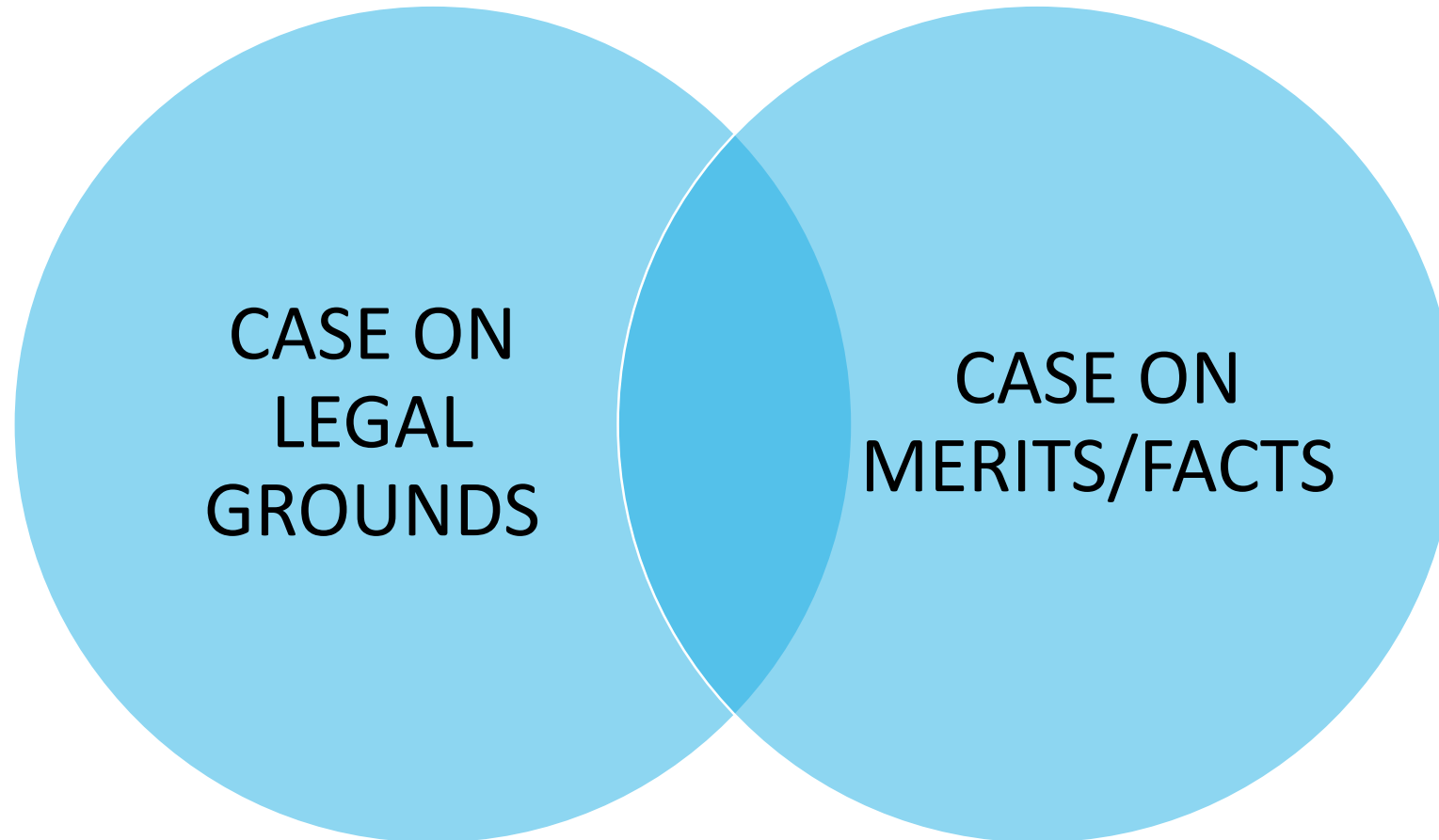
- Abated assessments on account of Search conducted between 01.04.2018 to 31.03.2019

HOW TO DEAL WITH TAX ASSESSMENTS?



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HOW TO DEAL WITH TAX ASSESSMENTS



CASE ON LEGAL GROUNDS

Suspicion howsoever strong cannot partake character of an evidence.

Suspicion can be initiating point for investigation but cannot be the final basis for assessment/reassessment



Suspicion: Judicial Precedents

- **Suspicion howsoever strong but cannot partake the character of evidence.**
 - Dhakeswari Cotton Mills Ltd vs. Commissioner of Income-tax [1954] 26 ITR 775 (SC)
 - Umacharan Shaw & Bros vs. Commissioner of Income-tax [1959] 37 ITR 271 (SC)
 - CIT vs. Kapil Nagpal, DBITA 609/2014 (Delhi HC)
 - Goyal Gases (P.) Ltd vs. Commissioner of Income-tax [1997] 94 TAXMAN 57 (DELHI)
- **Suspicion can be initiating point for investigation but not the final basis of assessment/reassessment/addition.**
 - PCIT v. Aditya Birla Telecom Ltd. [2019] 105 taxmann.com 206 (Bombay)
 - Rustagi Engineering Udyog (P.) Ltd vs. Deputy Commissioner of Income-tax [2016] 382 ITR 443 (Delhi).
 - Principal Commissioner of Income-tax vs. Meenakshi Overseas (P.) Ltd [2017] 82 taxmann.com 300 (Delhi)
 - CIT vs. Shri Jawahar Lal Oswal, DBITA 49/1999 (Punjab & Haryana HC)
 - Commissioner of Income-tax v. Neel Giri Krishi Farms (P.) Ltd. [2013] 218 Taxman 95 (Allahabad)(MAG.)

CASE ON LEGAL GROUNDS (CONTD.)

Jurisdiction

Approval/Sanction
of the Authority

Time Barred

Validity and
Service of Notice
u/s 143(2)

Non-speaking
Order

Presumptions,
Conjectures &
Surmises

Opportunity of
being heard

Absence of
Proper Enquiry

Absence of
Contrary
Evidence

Not covered u/s
68

Double Addition

INGREDIENTS OF SECTION 68

Any sum found credited in the **books of an assessee**

Assessee offers no explanation about the nature & source thereof,

or

Explanation offered is not satisfactory in the opinion of the AO

the sum so credited may be charged as income of the assessee **for that P.Y. (year in which it is found credited)**

ONUS OF PROOF ON THE ASSESSEE

Discharge of initial onus:

- ❖ The identity of the creditor is established
- ❖ The capacity/creditworthiness of the creditor is beyond doubt;
- ❖ The transaction is genuine

AFTER DISCHARGE OF INITIAL ONUS, ONUS SHIFTS TO AO

CASE ON MERITS/FACTS

Past history

Department's
stand in earlier
assessments

Books of Account
not rejected

Cash deposition
not disputed for
pre and post Demo
period

Past Sales and
Cash deposition
trend

Purchases and
Sales not disputed

Amount already
disclosed in Sales
and due taxed paid

CASE ON MERITS/FACTS (CONTD.)

Banking restrictions during Demo period

Case covered by exemption notification during Demo Period

Facts of the case do not fall within the scope of Department's Instructions/SOP

Department's SOP/Instructions checklist parameters favour the case of the Assessee

Explanation of the Assessee was accepted during OCM Drive

DEPARTMENT VERIFICATION CHECKLIST

4. Cash Deposit in Bank

- (a) Total cash deposit in Bank in F.Y. 2015-16
- (b) Total cash deposit in Bank from 01.04.2015 to 08.11.2015
- (c) Total cash deposit in Bank from 09.11.2015 to 31.12.2015

4.2. (a) Total cash deposit in Bank in F.Y. 2016-17

- (b) Total cash deposit in Bank from 01.04.2016 to 08.11.2016
- (c) Total cash deposit in Bank from 09.11.2016 to 31.12.2016

4.3. (a) Percentage increase between 4.2(a) and 4.1(a)

- (b) Percentage increase between 4.2(b) and 4.1(b)
- (c) Percentage increase between 4.2(c) and 4.1(c)

5. Cash Sales

5.1 (a) Total cash sales in F.Y. 2015-2016

(b) Total cash sales from 01.04.2015 to 08.11.2015

5.2 (a) Total cash sales in F.Y. 2016-2017

(b) Total cash sales from 01.04.2016 to 08.11.2016

5.3 (a) Percentage increase between 5.2(a) and 5.1(a)

(b) Percentage increase between 5.2(b) and S.I(b)



JUDICIAL PRECEDENTS



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What Apex Court Holds

Lalchand Bhagat Ambica Ram vs. CIT [1959] 37 ITR 288(SC).

- Where amount en-cashed on demonetization was part of cash balance in the books of account, AO can not disbelieve a part of such cash balance as being not of specified denominations, when the books are not rejected.
- It could not be said that the explanation given by the assessee company was either unreasonable or wrong. When the assessee company had given an explanation which was reasonable, the Income-tax authorities could have been entitled to treat the sum as income from undisclosed sources only if there was some other material from which such inference could have been drawn.

Mehta Parikh & Co. v. CIT [1956] 30 ITR 181 (SC).

- When assessee submitted books of account showing relevant entries showing payment being made to them which resulted in cash in its books and also submitted affidavits of payers, Revenue authorities can not hold that it was not possible that all payments after a particular date were being made in multiples of Rs. 1000. No addition can be sustained based on pure surmise.

Lakhmichand Baijnath V. CIT [1959] 35 ITR 416 (SC).

- Amount credited in business books can **normally be presumed as business receipt.**
- When an amount is credited in business books, it is not an unreasonable inference to draw that it is a receipt from business.

BURDEN ON PROOF ON DEPARTMENT

Kanpur Steel Co. Ltd. Vs. Commissioner of Income-tax [1957] 32 ITR 56 (ALL.)

- **The burden of proof lay upon the Department to show that the sum represented high denomination currency notes which were cashed by the assessee, represented suppressed income of the assessee from undisclosed sources.**
- The burden was not on the assessee to prove how it had received those high denomination currency notes. Until the High Denomination Bank Notes (Demonetisation) Ordinance, 1946, came into force, the high denomination currency notes could be used as currency as freely as notes of any lower denomination and no one had any idea that it would be necessary for him to explain the possession of high denomination currency notes.
- **The use of high denomination currency notes depended upon convenience of the individual possessing them and upon the nature of the transaction that he may have to go through.** It was only when the High Denomination Bank Notes (Demonetisation) Ordinance of 1946 came into force on the 12-1-1946, that it became necessary in instant case for the assessee company to explain its possession of those currency notes.

Contd...

Kanpur Steel Co. Ltd. Vs. Commissioner of Income-tax [1957] 32 ITR 56 (ALL.)

- **The assessee company had naturally not kept any statement indicating when it received each one of those currency notes, because, at the time when it received them, it had no idea that it would be required to give such an explanation and, therefore, it was not in a position to prove how and when it came into possession of those currency notes. The assessee company, however, gave an Explanation which was fairly satisfactory and which the Tribunal had not found to be false**
- Cash might have been received by the assessee-company on each day in respect of cash sales of that day as well as in payment of previous credit sales.
- If the cash balance of the assessee-company was steadily increasing it would not be at all unreasonable to accept the explanation given by the assessee-company that, for the sake of convenience, the cash balance was being kept in high denomination currency notes. High denomination currency notes could be stored more easily and, at the time of accounting, they would have facilitated counting.
- **When the assessee company had given an explanation which was reasonable, the Income-tax authorities could have been entitled to treat the sum as income from undisclosed sources only if there was some other material from which such inference could have been drawn.**

Gur Prasad Hari Das vs. Commissioner of Income-tax [1963] 47 ITR 634 (ALL.)

- **Prima facie value represented by high denomination notes in possession of assessee must be presumed to be part of his cash balance** and if department wanted to treat such value as his concealed income from some undisclosed sources, it was for department to establish that fact on basis of material in their possession
- The Tribunal themselves considered that **it was possible for the assessee to receive high denomination notes during the course of his business**. Having proceeded thus far, the Tribunal committed an error in not accepting the assessee's explanation in toto in regard to all the twenty-one high denomination notes. **Even in transactions of less than Rs. 1000, there was always the possibility of a receipt of high denomination notes and this possibility could not be ruled out because the burden of proof in a matter like this was upon the department. Unless the possibility of the receipt of high denomination notes in transactions of less than Rs. 1,000 was completely ruled out, it could not be said that the* mere fact that, there were no sale transactions of Rs. 1,000 or over, would not exclude that possibility and the burden upon the department would remain undischarged.**
- It was possible that even in a cash balance of a very large amount there may be no high denomination notes at all. Equally it was possible that even , in a cash balance of a small amount almost the entire cash balance may be made up only of high denomination notes. When both the possibilities were there, it could not be said that in taking the existence or non-existence of high denomination notes in a certain cash balance in a certain proportion the Tribunal could hold that the burden which rested upon the department stood discharged

Onus in case of Cash Sales

Harshila Chordia vs. Income Tax Officer [2008] 298 ITR 349(Raj)

23. So far as question No. 2 is concerned, apparently **when the Tribunal has found as a fact that the assessee was receiving money from the customers in hands against the payment on delivery of the vehicles on receipt from the dealer the question of such amount standing in the books of account of the assessee would not attract Section 68 because the cash deposits becomes self-explanatory** and such amounts were received by the assessee from the customers against which the delivery of the vehicle was made to the customers. The question of sustaining the addition of Rs. 6,98,000 would not arise.

Onus in case of Cash Sales

R.B. Jessaram Fetechand vs. CIT, Bombay City-II [1970] 75 ITR 33 (Bom)

The Income Tax Officer had scrutinised closely the account books of the assessee **and had found no fault with them excepting that the addresses of the customers for the cash sales of sugar had not been entered.** It was not found by him that there were any other reasons for not accepting the said cash sales, such as, for instance, the sales being at lower rates than what were prevailing in the market or that they were not comparable with the other verified sales, which the assessee had made during the material time. **In these circumstances, the reason given by the Income Tax Officer for rejecting the book results shown by the assessee's accounts or for not accepting the cash transactions as genuine cannot be accepted as good and sufficient unless there was an obligation on the part of the assessee to keep a record of the addresses of the cash customers.** It could not, therefore, be said that the failure on his part to maintain the addresses was a suspicious circumstance giving rise to a doubt about the genuineness of the transactions entered into by the assessee.

In the case of a cash transaction where delivery of goods is taken against cash payment, it is hardly necessary for the seller to bother about the name and address of the purchaser. In our opinion, therefore, the rejection of the results of the assessee's cash book by the Income Tax Officer was not at all justified and the Appellate Assistant Commissioner, therefore, was right in deleting the addition made by the Income Tax Officer.

If Source is the available cash Balance in books then initial onus is discharged

Narendra G. Goradia vs. CIT [1998] 234 ITR 571 (Bombay)

- What the assessee is required to prove in such cases is the source of money and once he is successful in proving the same, he cannot be put to further proof of acquisition of such amount in the currency notes of particular denomination.
- If the explanation shows that the receipt is not of income nature, the revenue cannot reject the explanation of the assessee to hold that it is income.
- Where the business, the state of accounts and dealings of the assessee justify a reasonable inference that he might have for convenience kept the whole or a part of particular sum in high denomination notes, the assessee, prima facie, discharges his initial burden when he proves the cash balance and that it might have been kept in high denomination notes.
- **Before the department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence which it has in its possession. The department cannot by merely rejecting unreasonably a good explanation convert good proof into no proof**

Lakshmi Rice Mills vs. Commissioner of Income-tax [1974] 97 ITR 258 (PAT.)

- If the balance at hand on the relevant date is sufficient to cover the value of the high denomination notes subsequently demonetised and even more, in the absence of any finding that the books of account of the assessee were not genuine, the source of income is well disclosed and it cannot amount to any secreted profits within the meaning of the law.
- **What has to be disclosed and established is the source of the income or the receipt of money, not the source of the receipt of the high denomination notes which were legal tender at the relevant time .**

Instruction No. .3/2017 [F.NO.225/100/2017/ITA-II], DATED 21-2-2017

- **1.4 In case of persons engaged in business or requirement to maintain books of accounts, no additional information is required to be submitted by the person under verification if total cash out of earlier income or savings (sum of responses for all cash transactions) is not more than the closing cash balance as on 31st March 2016 in the return for AY 2016-17**. However, if the AO has reason to believe that the closing cash balance as on 31st March 2016 has been increased by revising the return or backdating transactions in the books of account, further verification may be carried out Important point

AO TO CONDUCT PROPER ENQUIRIES, BEFORE MAKING ANY ADDITION

- ❖ **Agson Global Pvt Ltd vs The _Assistant_ Commissioner MANU/ID/1242/2019 (Delhi Tribunal)**
- ❖ **CIT vs. Korlay Trading Co. Ltd [1998] 232 ITR 820 (CAL.)**
- ❖ **Choice Buildestate Private Ltd. v. ITO (ITA No. 431/JP/2016) (ITAT Jaipur)**

BOOKS REJECTION VS. SECTION 68 ADDITION

CIT v. G.K. Contractor [2009] 19 DTR (Raj.) 305 (para 8).

In our considered opinion, even if the assessee has failed to discharge his onus of proof in explaining the cash credits shown in the books of account as "market outstanding", the AO having estimated the higher profit rate on total contract receipts after rejection of the books of account invoking the provisions of s. 145(3), no separate additions can be made on account of unexplained cash credit under s. 68 of the Act of 1961. *We are in complete agreement with the view taken by the CIT(A), confirmed by the Tribunal. Thus, no substantial question of law arises for consideration of this Court in this appeal.*

BOOKS REJECTION VS. SECTION 68 ADDITION

Commissioner of Income-tax, Patiala v. Dulla Ram, Labour Contractor, Kotkapura [2014] 42 taxmann.com 349 (Punjab & Haryana)

Thus, when account books are rejected, it would follow, as a necessary corollary, that entries in the account books whether suspicious or not cannot be relied upon by the revenue or the assessee.

To hold otherwise, would, in essence, render account books valid for certain purposes and invalid for others, a course impermissible in law.

*The Commissioner (Appeals) as well as the Tribunal have rightly held that as books of account were rejected in their entirety, the Assessing Officer could not rely upon any entry in the books of accounts for making an addition. **A bare reading of section 68 would reveal that it would not apply to a situation where account books have been rejected.** [Para 10]*

BOOKS REJECTION VS. SECTION 68 ADDITION

Where A.O. and Ld. CIT(A) rejected the books of account of the assessee and ultimately, estimated gross profit on suppressed sales, he could not make separate addition on account of unexplained investment, undisclosed income etc., and also cannot make dis allowance of expenses under section 40A(3) of the I.T. Act and addition u/s 68 of the Act.

- **CIT, Belgaum vs. Bahubali Neminath Muttin (2016) 72 taxman.com 139 (Karnataka) (HC),**
- **CIT, Ludhiana vs. Santosh Jain (2008) 296 ITR 324 (P & H) (HC),**
- **CIT vs. Banwari Lal Bansidhar (1998) 229 ITR 229 (All.) (HC), Indwell Construction vs. CIT (1998) 232 ITR 776 (A.P.) (HC), CIT vs. Aggarwal Engg. Co. (2008) 302 ITR 246 (P & H), CIT vs. President Industries (2002) 258 ITR 654 (Guj.), CIT vs. M/s. Hind Agro Industries, ITAT, Chandigarh Bench and ITO vs. Nardev Kumar Gupta (2013) 22 ITR (Tribu.) 273 (Jaipur).**
- **Kamal Motors v. CIT [2003] 131 Taxman 155 (Raj.).**

NO ADDITION CAN BE MADE ON THE BASIS OF BANK PASS BOOK

CIT vs.
Bhaichand H.
Gandhi 141 ITR
67 (Bombay)

CIT vs. Taj Bore
wells 291 ITR
232 (Mad)

Bhagwati Devi
vs. ITO 118
Taxation 53
(Trib).

ITO vs. Sanyasi
Majhi 13 ITD
61 (Cal.).

Demonetised Notes: Whether Unexplained Money?

CIT vs. Andhra Pradesh Yarn Combines (P.) Ltd. [2006] 282 ITR 490

(Karnataka)

*The expression 'money' has different shades of meaning. In the context of income-tax provisions, it can only be a currency token, bank notes or other circulating medium in general use, which has the representative value. Therefore, the **currency notes on the day when they were found to be in possession of the assessee should have had the representative value, namely, it could be tendered as a money, which has intrinsic value.** When, the RBI refused to exchange the high denomination notes when they were tendered for exchange, they were only scrap of paper and **they could not be used as circulating medium in general use as the representative value and, therefore, it could not be said that the assessee was in possession of unexplained money.***

PRECEDENTS AGAINST THE ASSESSEE

- Onus is on assessee to prove positively the source and nature of an amount received by him in accounting year, and if he fails to discharge that onus, income-tax authorities are entitled to draw an inference that amount received was of an income nature.
- Where assessee not having satisfactorily proved source and nature of amount which he encased on demonetization, revenue authorities were perfectly justified in drawing an inference that said sum was of an income nature.

Chunilal Rastogi vs. CIT [1955] 28 ITR 341 (Pat.)

Anil Kumar Singh vs. CIT [1972] 84 ITR 307 (Cal.)

M. L. Tewary vs. CIT [1955] 27 ITR 630 (PAT.)

IN CASE OF CASH IN HAND

Tests to be satisfied

Identity

- Not required to be proved

Creditworthiness

- Not required to be proved

Genuineness of the transaction

- Books of account disclosing cash in hand is mandatory in order to establish genuineness of cash

IN CASE OF CASH SALES/ ADVANCE FROM CUSTOMERS

Tests to be satisfied

Identity of the Customer

- **Less than Rs.2 Lakhs:** Advisable to maintain appropriate documentation
- **More than Rs.2 Lakhs:** Required to maintain documentation including name, address and PAN number of the purchaser. Rule 114C(2) read with Sl. No. 18 of Rule 114B of the Income tax Rules, 1962 obligates the person raising bills to ensure that PAN is correctly furnished by the purchaser.

Creditworthiness of the Customer

- Not required to be proved in case of cash sales

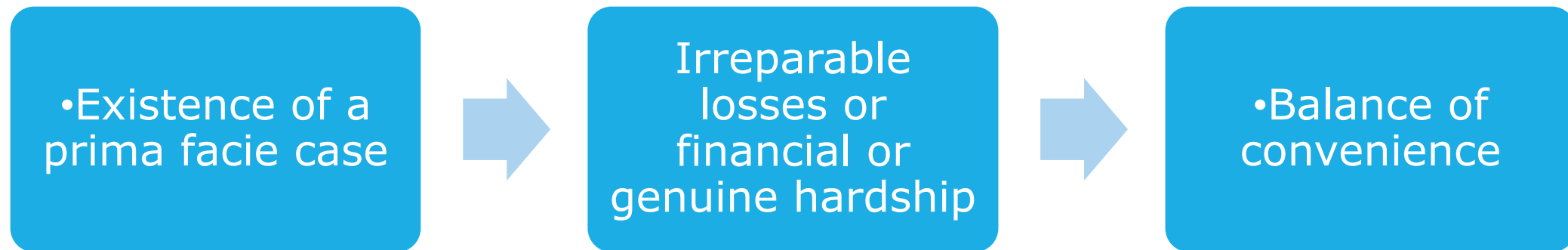
Genuineness of the transaction

- Nature of activity/ business carried on by the assessee
- Disclosure in books of account, stock register, invoices, purchase orders, etc. are required to be maintained
- Test of preponderance of probability

CASH SALES UNDER DIFFERENT CIRCUMSTANCES

Case	Question on discharging onus of Proof	Defense Available
CASH SALES UPTO RS. 2 LAKH PER TRANSACTION	No PAN, Names Available	Genuineness of books of accounts, Bills produced, Past trends and data, consistency of accounting, no law mandating KYC norms Issue of bills in fictitious names, Person not traceable?
CASH SALES EXCEEDINGS 2 LAKH PER TRANSACTION	REQUIREMENT TO OBTAIN PAN, COLLECT TCS	PAN Nos given, AO to make inquiry in case in his opinion explanation of Assessee is not proper Issue of discharging burden through confirmation?
CASH SALES OF JEWELLERY EXCEEDINGS 5 LAKH	REQUIREMENT TO OBTAIN PAN, COLLECT TCS	PAN Nos given, AO to make inquiry in case in his opinion explanation of Assessee is not proper Issue of discharging burden through confirmation?

APPLICATION U/s 220(6): GROUNDS FOR APPLICATION



APPLICATION U/s 220(6): GROUNDS FOR APPLICATION (CONTD.)

- **CBDT Circular No. 530, dated 6-3-1989 read with Circular No. 589, dated 16.01.1991, stay shall be granted on following reasons:**
 - Where demand due to contrary interpretation of law.
 - Issue have been decided in favour of Assessee in earlier orders.
- **Instruction no. 95 dated 21/08/1969**
 - Where the income determined on assessment was substantially higher than the returned income, collection of the tax in dispute should be held in abeyance till the decision on the appeal.
- **INSTRUCTION NO. 1914, DATED 2-2-1993**
 - Suppressed the earlier instruction dated 1969 and 1989. Laid down the comprehensive Instruction on the subject of recovery of tax demand in order to streamline recovery procedures.

APPLICATION U/s 220(6): GROUNDS FOR APPLICATION (CONTD.)

- **OFFICE MEMORANDUM [F.NO.404/72/93-ITCC], dated 29-2-2016**
 - AO is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount lower than 15%* is warranted.

Where addition on the same issue has been deleted by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of the assessee, amount lower than 15%* may be warranted.

- **OFFICE MEMORANDUM [F.NO.404/72/93-ITCC], DATED 31-7-2017**

*Revised to 20%

THANKS



Chir Amrit Corporate School