

DESAI SAKSENA & ASSOCIATES

10th May, 2024

Friday Tax Alert

From:

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Guidelines for compulsory selection of returns for Complete Scrutiny during FY 2024-25

Sr. No.	Parameter	Procedure for Compulsory Selection
1	Cases pertaining to survey u/s 133A of the Income-tax Act, 1961 (Act)	
	Assessments as a result of Survey u/s 133A of the Income-tax Act, 1961 (other than survey U/S 133A(2A) of the Act) leading to detection of specific information! material pointing out tax evasion.	The cases shall be selected for compulsory scrutiny with prior administrative approval of Pr. CIT/Pr. DIT/CITIDIT concerned, who shall ensure that such cases are transferred to Central Charges u/s 127 of the Act within 15 days of service of notice u/s 143(2) of the Act by the Jurisdictional Assessing Officer (JAO) concerned.
2	Cases pertaining to Search and Seizure	
(i)	Search & seizure/ requisition prior to 01.04.2021: Assessments in search & seizure cases to be made under Section 153C read with section 143(3) of the Act, and also for return filed for assessment year relevant to previous year in which the search was conducted u/s 132 or requisition was made u/s 132A of the Act.	<p>The cases shall be selected for scrutiny with prior administrative approval of Pro CIT/Pr. DIT/CIT/DIT concerned, who shall ensure that such cases are transferred to Central Charges u/s 127 of the Act within 15 days of service of notice u/s 143(2)/142(1) of the Act by the Jurisdictional Assessing Officer concerned.</p> <p>Where such cases are not centralized and Return of Income is filed in response to notice u/s 153C, the Jurisdictional Assessing Officer concerned shall serve notice u/s 143(2) of the Act.</p> <p>Where such cases are not centralized and no Return of Income is filed in response to notice u/s 153C, the Jurisdictional Assessing Officer concerned shall serve notice u/s 142(1) of the Act calling for information.</p>
(ii)	Search & seizure/ requisition on or after 01.04.2021: Assessments in search & seizure cases/ requisitions cases u/s 132/132A conducted on or after 01.04.2021.	The cases shall be selected for scrutiny with prior administrative approval of Pro CIT/Pr. DIT/CITIDIT concerned, who shall ensure that such cases are transferred to Central Charges u/s 127 of the Act within 15 days of service of notice u/s 143(2)/142(1) of the Act by the Jurisdictional Assessing Officer concerned.
3	Cases in which notices u/s 142(1) of the Act, calling for return, have been issued & no returns have been furnished	
	Cases where no return has been furnished in response to a notice u/s 142(1) of the Act	Jurisdictional Assessing Officers (JAOs) shall upload the underlying documents on the basis of which notice u/s 142(1) was issued on ITBA, for access by National Faceless

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		<p>Assessment Centre (NaFAC).</p> <p>The Directorate of Income-tax (Systems) shall forward these cases to NaFAC, which will take further necessary action.</p> <p>Further action as per the provisions of the Act shall be taken through NaFAC.</p>
4	Cases in which notices u/s 148 of the Act have been issued	
	<p>Cases where return is either furnished or not furnished in response to notice u/s 148 of the Act.</p>	<p>(i) Cases, where notices u/s 148 of the Act have been issued pursuant to search & seizure/survey actions conducted on or after the 1st day of April, 2021: These cases shall be selected for compulsory scrutiny with prior administrative approval of Pr. CIT/Pr. DIT/CIT/DIT concerned who shall ensure that such cases, if lying outside Central Charges, are transferred to Central Charges u/s 127 of the Act within 15 days of service of notice u/s 143(2)/142(1) of the Act calling for information by the Jurisdictional Assessing Officer concerned. (subject to para 4.2)</p> <p>(ii) Cases other than search & seizure/survey:</p> <p>a) For those cases which are to be completed by NaFAC on or before 31.03.2025, Jurisdictional Assessing Officers (JAOs) shall upload the underlying documents, on the basis of which notice u/s 148 was issued, on ITBA, for access by NaFAC.</p> <p>The Directorate of Income-tax (Systems) shall forward these cases to NaFAC, which will take further necessary action.</p> <p>Notice u/s 143(2)/142(1) of the Act calling for information shall be served on the Assessee through NaFAC. (For Assessing Officers in International Taxation and Central Circle charges: refer Para 4.1 at Page No. 05)</p>
5	Cases related to registration! approval under various sections of the Act, such as 12A, 12AB, 35(1)(ii)/(iia)/(iii), 10(23C)(iv)/(v)/(vi)/(via), etc.	
	<p>Cases where registration/approval under various sections of the Act, such as section 12A, 12AB, 35(1)(ii)/(iia)/(iii), 10(23C)(iv)/(v), (vi)/(via), etc. have not been granted or have been cancelled/withdrawn by the</p>	<p>The Jurisdictional Assessing Officers (JAOs) shall prepare a list of cases falling under this parameter with prior administrative approval of Pr. CIT/Pr. DIT/CIT/DIT concerned.</p> <p>The consolidated list of such cases shall be submitted by the Pr. CIT/Pr.DIT/CMDIT to</p>

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	Competent Authority, yet the Assessee has been found to be claiming tax-exemption/deduction in the return. However, where such orders of withdrawal of registration/approval have been reversed/set-aside in appellate proceedings, those cases will not be selected under this clause.	<p>the Pr. CCIT concerned. Pr. CCIT concerned shall forward this list of cases to Directorate of Income-tax (Systems).</p> <p>Notice u/s 143(2) of the Act shall be served on the Assessee through NaFAC.</p> <p>The Jurisdictional Assessing Officers shall upload the underlying documents containing specific information regarding this parameter immediately.</p>
6	Cases involving addition in an earlier assessment year(s) on a recurring issue of law or fact and/or law and fact	
	<p>Where the addition in an earlier assessment year(s) on a recurring issue of law or fact and/or law and fact (including transfer pricing issue) is:</p> <p style="padding-left: 40px;">a) exceeding Rs. 25 lakh in eight metro charges at Ahmedabad, Bengaluru, Chennai, Delhi, Hyderabad, Kolkata, Mumbai and Pune;</p> <p style="padding-left: 40px;">b) exceeding Rs. 10 lakh in charges other than eight metro charges:</p> <p>and where such an addition:</p> <p style="padding-left: 40px;">i) has become final, as no further appeal has been preferred against the assessment order; or</p> <p style="padding-left: 40px;">ii) has been upheld by the Appellate Authorities in favour of Revenue; even if further appeal of Assessee is pending, against such order.</p>	<p>The Jurisdictional Assessing Officers (JAOs) shall prepare a list of cases falling under this parameter with prior administrative approval of Pr. CIT/Pr. DIT/CIT/DIT concerned.</p> <p>The consolidated list of such cases shall be submitted by the Pr. CIT/Pr. DIT/CIT/DIT to the Pr. CCIT concerned. Pr. CCIT concerned shall forward this list of cases to Directorate of Income-tax (Systems).</p> <p>Notice u/s 143(2) of the Act shall be served on the Assessee through NaFAC.</p> <p>The Jurisdictional Assessing Officers shall upload the underlying documents containing specific information regarding this parameter immediately.</p>
7	Cases related to specific information regarding tax-evasion	
	<p>Cases, in respect of which:</p> <p style="padding-left: 40px;">a) specific information pointing out tax-evasion for the relevant assessment year is provided by any law-enforcement agency, (Investigation wing Intelligence/Regulatory Authority/ Agency, etc.); and</p> <p style="padding-left: 40px;">b) the return for the relevant</p>	<p>The Jurisdictional Assessing Officers (JACs) shall prepare a list of cases falling under this parameter with prior administrative approval of Pr.CITPr.DIT/CIT/DIT concerned.</p> <p>The consolidated list of such cases shall be submitted by the Pr. CIT/Pr. DIT/CIT/DIT to the Pr.CCIT concerned. Pr.CCIT concerned shall forward this list of cases to Directorate of Income-tax (Systems).</p> <p>Notice u/s 143(2) of the Act shall be served</p>

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	assessment year is furnished by the Assessee.	on the Assessee through NaFAC. The Jurisdictional Assessing. Officers shall upload the underlying documents containing specific information regarding this parameter immediately.
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Where assessment under section 147 was already concluded and proceedings had attained finality, said proceedings could not be ignored and proceedings initiated by issuance of notice under section 148A(b) in consequence to decision of Supreme Court in *Union of India v. Ashish Agarwal* [2023] 291 Taxman 1 (SC) could not be justified

Facts of the case:

1. The Assessee was issued notice under section 148 for the relevant assessment year. Pursuant to said notice, the Assessee filed her return. Subsequently, an assessment order under section 147 read with section 144A(b) was passed whereby an addition was made to the income of the Assessee on account of alleged accommodation entry.
2. The Assessee preferred an appeal before the Commissioner (Appeals) (NFAC), which was pending for disposal till date.
3. Meanwhile, a show cause notice under section 148A(b) was issued to the assessee.
4. Thereafter, an order under section 148A(d) came to be passed alleging an escapement of income which was substantially greater than the alleged income which was originally reflected in the show cause notice. A reopening notice under section 148 was also purportedly issued to the Assessee with an intimation letter for the relevant assessment year

Conclusion:

1. The solitary grievance of the assessee requires adjudication on the touchstone of the decision of the Supreme Court in the case of *Union of India v. Ashish Agarwal* [2022] 138 taxmann.com 64/286 Taxman 183/444 ITR 1 (SC) i.e., whether the revenue, under the facts of the present case, are legally justified in reinitiating assessment proceedings for the same assessment year, which had already been subjected to reassessment.
2. As is evident from the facts, the Assessing Officer has issued notice under section 148A(b) on the premise that the judgment in *Ashish Agarwal* (supra) requires all notices issued under Section 148 between the period commencing from 01-4-2021 and ending on 30-6-2021 to be treated as show cause notices referable to section 148A(b) . However, the said notice fails to consider that the final order had already

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been passed in the reassessment proceedings qua the assessee on the same alleged escapement of income.

3. Undisputedly, the revenue has proceeded to pass an order under Section 148(A)(d) premised on an identical ground of escapement of income as alleged in the original notice for reassessment issued on 31 -3-2021. It is also not the case of the revenue that they had sought to recommence the concluded reassessment proceedings based on certain new information or additional grounds of escapement of income. Rather, they have only relied upon the decision of Ashish Agarwal (supra) to wield power to proceed with the reassessment. Thus, the only question which needs to be examined is whether the decision in Ashish Agarwal (supra) commands an authority to reopen even concluded assessment proceedings.
4. A similar challenge as has been laid in the instant writ petition in the case titled as *Anindita Sengupta v. Asstt. CIT [2024] 161 taxmann.com 39 (Delhi)*, whereby, it was held that the procedure envisaged in Ashish Agarwal (supra) unambiguously stood confined to matters where although notices may have been issued, proceedings were yet to have attained finality.
5. The facts that assessment under section 147 was already concluded, said proceedings were completely ignored and no new material was unearthed, closely resemble the factual scenario in the case of Anindita Sengupta(supra)). Thus, the controversy in hand is squarely covered by the decision in the case of Anindita Sengupta (supra). Therefore, the instant writ petition is to be allowed.

Akshita Jindal v. Income Tax Officer [2024] 162 taxmann. com 313 (Delhi)