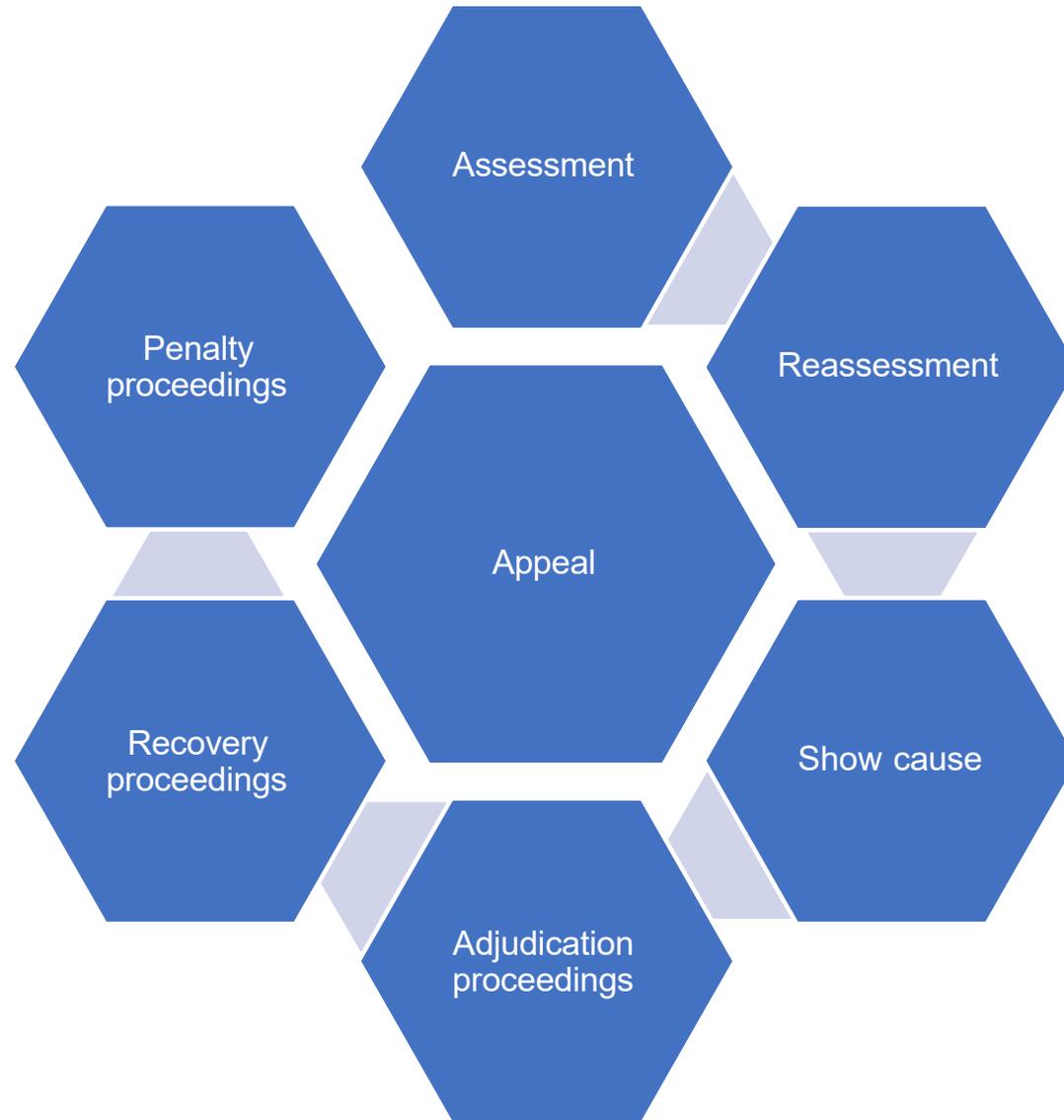




# **Powerful Representation in Faceless regime**

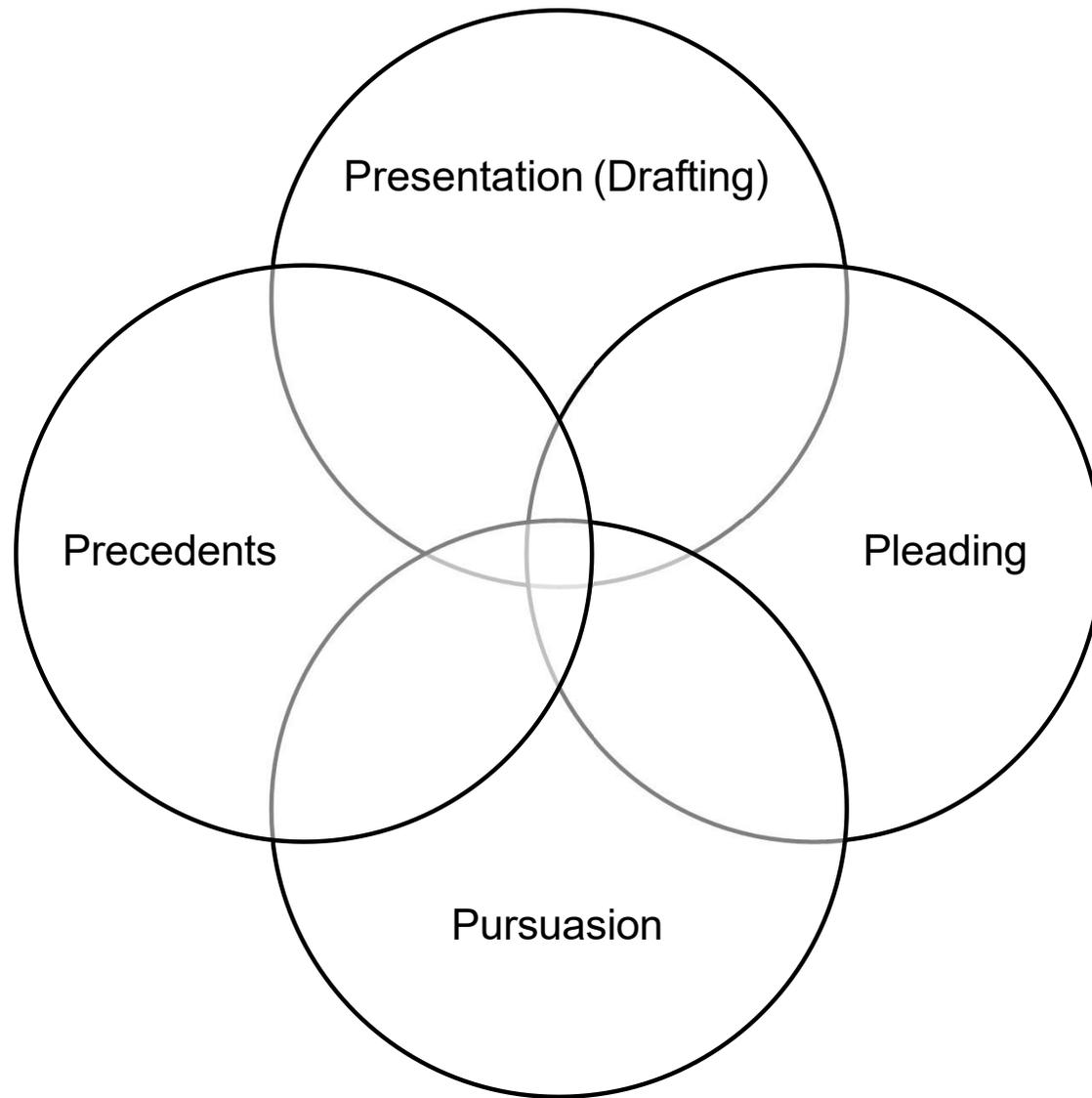
# Proceedings

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# Coverage

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*“Palkhiwala used to look into eyes of judges  
and dominate their brains”*

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# Presentation

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## ▶ Fonts

- ▶ Times new Roman
- ▶ Verdana
- ▶ Georgia

## ▶ Spacing

- ▶ 1.5/ double spacing

## ▶ Referencing

- ▶ Name of Assessee [PAN]
- ▶ Assessment Year
- ▶ DIN
- ▶ Subject



# Essentials of draft

---

Facts

Law

- Notice, provisions, jurisdiction

Taxpayers Charter

Reference to Verification team

Video Conferencing

Supportings

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# Facts

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- ▶ *Marshall the facts, law shall follow*
- ▶ Read the order thrice at different times
- ▶ Threadbare analysis of facts
- ▶ File Affidavit if wrong facts are quoted
- ▶ Same facts different way
  - ▶ *R.J Kolah's way*



# Law

---

## ▶ Notice

- ▶ S..148 /148A controversy – political donations
- ▶ Search before 01.04.21 – 153C / 148 ?
- ▶ JAO/FAO – 29.03.22 Circular
  - ▶ Telangana HC, Bombay HC
- ▶ Notice to deceased
- ▶ S. 148 notice requiring return filing in 30 days
- ▶ Jurisdiction of Ward/ Circle?
- ▶ Rajiv Bansal's decision and aftermath
- ▶ Approval by specified authority / mechanical
- ▶ Authentication issues
- ▶ DIN – absence, post facto
- ▶ Issue of notice – uploaded on portal?
- ▶ Cardinal principles – change of opinion, no new info.



# Authentication issues

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- ▶ Signing of final assessment order by AO is a mandatory requirement and not merely a procedural formality
- ▶ Reuters Asia Pacific Ltd. vs. Deputy Commissioner of Income-tax, International Tax Circle - 4(1)(1) [2023] 157 taxmann.com 705 (Mumbai - Trib.)



# Video Conferencing

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- ▶ Right of Assessee to seek hearing through VC
- ▶ Not discretionary to AO
- ▶ Margita Infra [2023] 149 taxmann.com 51 (Gujarat)
  - ▶ *It is not for the officer concerned to decide as to whether there is anything to be considered or not to be considered without any material having come before him or before he allows the audience to the party concerned.*
  - ▶ *This was a faceless assessment, for which, the provision has been extensively done. Reference is made to section 144 B which speaks of the faceless assessment.*
  - ▶ *Noticing the fact that the provision itself permits the assessee to have right to seek the audience and once denied when repeatedly asked for is surely is the reason for this Court to hold that the order which has been passed is in breach of principles of natural justice, therefore, deserves to be quashed.*



# Essentials of draft

---

Facts

Law

- Notice, provisions, jurisdiction

Taxpayers Charter

Reference to Verification team

Video Conferencing

Supportings

---



# Drafting tips

---

## Salutations

- *May it please Your Honours*
- *Most respectfully sheweth*
- Respected Sir
- Hon'ble Sir

## Starting

- **At the outset**
  - This is in response to **captioned appeal**
  - This is in regard to
  - With regards to the issue
  - We submit as follows:
  - We state as follows
- 
- 

# Drafting

---

## Special

- Without prejudice to above
- Be that as it may
- Needless to mention
- It may be appreciated that
- Whilst on the issue
- It is pertinent to note

## Jurisprudence

- Reliance is placed on
  - The Appellant relies on
  - Your kind attention is invited to
- 
- 

# Drafting

---

## End note and prayers

- The Appellant prays that the said addition/disallowance be deleted.
- In view of foregoing it is humbly submitted.
- For this act of kindness we shall always remain grateful to you.
- We hope this fully explains the issue, however we shall be happy to elucidate further, if need be.
- Further, we request you to grant us a **personal hearing** to enable to us to elaborate on the above matter.
- Hoping to be excused for the inconvenience caused.



# Pictures and tables

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- ▶ Explain facts in tables so that it is easy to understand
- ▶ Precision and concisement

Averment	Rebuttal
<p>Assessee did not furnish information regarding stock, month wise cash in Hand, monthly analysis of cash deposits and comparing them with the last year's figure.</p>	<p>The Assessee is a small retail Kirana shop business man with limited resources, means and understanding and has tried to submit all possible details in the time available. Merely because the high figh MIS details of monthly stock, cash deposit and comparative figures from presumptive period is not available cannot be used to assume that no business existed.</p> <p><b>The Tax payer's charter now holds the AO responsible to consider tax payer as honest however the impugned draft order is purely based on conjectures and surmises with a biased mind.</b></p> <p>What more can a small Kirana shop keeper can maintain apart from voluminous records which have been submitted. We request that a fair and reasonable treatment be accorded to Assessee and addition should not be made on conjectures and surmises with biased mind.</p> <p><b>Be that as it may we request that verification of complete books of accounts be referred to the verification team if there is any communication difficulty in comprehending the details submitted by the Assessee.</b></p>

# Taxpayers Charter

---

Needless to invite your attention to the recent initiative of the Government of India which recognised the need of providing its taxpayers a definitive platform has separately provided such safeguards in the shape of '**Taxpayers Charter**' issued on August 13, 2020. Issuance and applicability of Taxpayers' Charter shows the determination of the Government of India that the revenue authorities should implement the tax regime fully loaded with the compliance of natural justice. Not only it is an implementation of rules of natural justice in an honest manner but it also speaks of **treating the taxpayer with fairness and impartiality and making fair and equitable decisions with law and resolution of concerns, problems or complaint fairly and as quickly as possible.** All these elements are basic and fundamental rules of natural justice.





# Pleading Principles

# Initial Burden of Proof

Normal Issue

Party whom claims  
contrary (normally AO)

Deeming Provision 68  
to 69D

Initial onus on Assessee  
to prove nature &  
source



## Not to prove Negative

---

Taxpayer cannot be compelled to prove the negative. Apparent is Real

- Daulat Ram Rawatmull (1973) 87 ITR 349

If Assessee denies the income, Revenue has to prove that such income has been earned by the taxpayer.



# Thumb Rule

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Presumption of good faith

Assessee has acted in a bonafide manner, unless contrary proved by Revenue

---



# Thumb Rule Not Applicable

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Sections 68 to 69D

presumption against the taxpayers

Rebuttal by explaining Nature and Source

Shifting of onus by establishing

- Identity
- Creditworthiness
- Genuineness



# The Identity Crises – ~~Onus shift~~

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By Merely by establishing the identity of the party

- Shankar Industries (1978) 114 ITR 689,
- C.Kant & Co.(1980) 126 ITR 63,
- Prakash Textile Agency (1980) 121 ITR 890

By Mere Filing of Confirmation letters

- Bharti P. Ltd. (1978) 111 ITR 951,
  - W.J. Walker & Co. (1979) 117 ITR 690,
  - United Commercial & Industrial (1991) 187 ITR 596
- 
- 

# Circumstantial Evidences

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## Admissible Evidences

- Indirect Evidences
- Circumstantial Evidences
- ~~Hearsay evidence~~

## Jurisprudence

- Jaikumar Bakliwal (366 ITR 217)(Raj)



# Absence of Witness

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Witness fails to attend due to various reasons

Mere absence of witness could not lead to an adverse inference against the taxpayer.

- Anis Ahmad and Sons 297 ITR 441 (SC)



# Verify purchase and sale transactions

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- ▶ Non receipt of response under Section 133(6) from suppliers
- ▶ Anis Ahmad & Sons vs. CIT [2008] 297 ITR 441 (SC)
  - ▶ the assessee could not be held responsible for non-appearance of traders to whom the summons were issued by the Assessing Authority.
  - ▶ no adverse inference ought to have been drawn by the authorities for non-appearance of those traders
- ▶ Cheil India (P.) Ltd. [2016] 68 taxmann.com 410
  - ▶ “it is a well established position of law that genuineness of the claim cannot be denied merely because the party to whom payment claimed to have been made is not responding to the notice issued by the Assessing Officer especially when the assessee claimant had filed sufficient documents in support of the payment claimed. **There may be several reasons for a party for non-appearance or non compliance before the Assessing Officer, for which the assessee cannot be penalized.**”



# Application of Mind

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Application of mind is sine qua non

Due care and attention must be exercised

Jurisprudence

- New Central Jute Mills Co Ltd. vs. Dwijendralal Brahmachari [1973] 90 ITR 467 (Cal)



# Statement by Double Speaking Person

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- ▶ **Eastern Commercial Enterprises 210 ITR 103 (Cal)**
  - ▶ *It is true that he has proved to be a shifty person as a witness.*
  - ▶ *At the earlier stages, he claimed all his sales to be genuine*
  - ▶ *but before the Assessing Officer in the case of the assessee, he disowned the sales specifically made to the assessee.*
  - ▶ *This statement can at the worst show that Shri Sukla is not a trustworthy witness and little value can be attached to what he stated either in his affidavits or in his examination by the Assessing Officer. His conduct neutralises his value as a witness.*
  - ▶ **A man indulging in double-speaking cannot be said by any means a truthful man at any stage and no court can decide on which occasion he was truthful.**



# Suspicious

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AO must not be biased or presumptuous against Assessee

Evidence and statements must be weighed upon their own merits

Claim of a taxpayer cannot be rejected on the suspicion that the witness came forth only to oblige the taxpayer

- Sheo Narain Duli Chand vs. CIT [1969] 72 ITR 766(All)



# Lack of Enquiry

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Assessing Officer cannot '**sit back with folded hands**' till the taxpayer exhausts all the evidence or material in his possession and then comes forward to merely reject the same on the basis of presumptions.

No addition can be made In case of clear lack of enquiry

- Gangeshwari Metal (P) Ltd. (2014) 361 ITR 10



# Principles of Natural Justice

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Principle of Audi Alteram Partem is must

- Swadeshi Cotton Mills 68 AIR 818 (SC);
- Sahara India (Firm) 300 ITR 403 (SC)

Appellate Authorities remand back such cases



# Independent / Private Enquiries

---

AO can rely on private sources of info

However it can be used against only after

- Communicate such evidence to Assessee;
- Sufficient opportunity to rebut

Kishinchand Chellaram vs. CIT [1980] 125 ITR 713  
(SC)

On specific request opportunity for cross examination  
is must

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# Art of Cross examination – Paul Brown

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## If they are bold –

- observe a gravity and ceremony towards them
- to repress assurance

## If they are alarmed

- Commence with familiar subject.
  - Where do you live, How long you know
- Let mind gain equilibrium

## Modulate your voice as per circumstances

- Inspire the fearful and repress the bold

Never call witness which your adversary is compelled to call



# Common Cause vs. UOI (Sahara Diaries case)(SC)

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Entries in loose papers/sheets are irrelevant and inadmissible as evidence

Such loose sheets are not books of account

Entries therein are not sufficient to charge a person with liability

Even if books are kept, entries therein shall not be sufficient evidence.

**Person relying on such entries has to prove that they are in accordance with facts**

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# Whatsapp chats as evidence

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## ▶ Threats issued to a person on WhatsApp

- ▶ HC directed the police to conduct an enquiry in the case of H.B. Saravana Kumar vs. State, CrI. O.P. No. 10320/2015. The Court relied on a CD containing the WhatsApp chats as evidence of the threats.

## ▶ Bombay HC in Kross Television case held that

- ▶ It cannot be that rules and procedure are either so ancient or so rigid (or both) that without some antiquated formal service mode through a bailiff or even by beat of drum or pattaki, a party cannot be said to have been 'properly' served. The purpose of service is put the other party to notice and to give him a copy of the papers. The mode is surely irrelevant. Courts have not formally approved of email and other modes as acceptable simply because there are inherent limitations to proving service. Where an alternative mode is used, however, and service is shown to be effected, and is acknowledged, then surely it cannot be suggested that the Defendants had 'no notice'.



## Doubting of creditworthiness on ground of lower returned income

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- ▶ Garima Polymers (P.) Ltd. vs. ACIT [2021] 131 taxmann.com 4 (Delhi - Trib.)
  - ▶ *it is held that where Assessee received unsecured loan from creditors through banking channel and they had sufficient bank balance to give loan to Assessee, merely because low income was shown in return of income by creditor, it was no ground to make any addition against Assessee*



# Cash deposit before advancing loan

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- ▶ DCIT vs. Rohini Builders [2003] 127 TAXMAN 523 (GUJ.)
  - ▶ If primary onus is discharged then no addition can be made only on account of cash deposit in bank account of lender.
- ▶ Moongipa Investment Ltd. vs. ITO [2013] 30 taxmann.com 113 (Delhi - Trib.)
  - ▶ where assessee had proved identity and creditworthiness of lenders, Assessing Officer cannot disbelieve deposits merely because there was cash deposit of similar amount in creditor's account.



# Subsequent repayment of loan

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- ▶ Repayment of loan is a strong indicator to prove genuineness of credit
  - ACIT vs. Rakesh Bhartia (ITA No. 428/Kol/2012)
  - H.R. Mehta vs. ACIT [2016] 387 ITR 561 (Bombay)



# Impact of Allied laws on Income tax

## Common aspect of Legends of income tax



## Other important statutes

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General Clauses Act

Indian Evidence Act

Contract Act

Sale of goods Act

Insolvency and Bankruptcy Code

Civil Procedure Code

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# General Clauses Act and Income tax

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- ▶ Deciding limitation period – 148 cases – Issue/ service of notices
- ▶ G.D. Foods and Manufacturing (India) (P.) Ltd. [2023] 152 taxmann.com 323 (Delhi - Trib.)
  - ▶ Payment towards contributions of ESIC and EPF with one day delay as respective due date fell on Sunday or gazetted holiday, said payment was to be allowed as per General Clauses Act
- ▶ S. 24 of GCA – Repeal vs. Omission
  - ▶ *Repeal is from the date of its enactment retrospective*
- ▶ Date of hearing falls on holiday



## Usefulness of IEA

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To consider Section 91, 92 and 94 of IEA for

- Considering the terms of document
- Interpreting certain terms of document and its effect
- Terms of document and the validity has to be decided based on provisions of IEA

AVN Jagga Row vs. SIT 166 ITR 862  
(AP)

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# Indian Evidence Act

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IEA not strictly applicable to Income tax

- Dhakeshwari Cotton Mills [1954] 26 ITR 775

Rigours of IEA may not be applicable to tax cases, but the AO is not prevented from applying

- Chuharmal vs CIT [1988] 172 ITR 250

Importance of Evidence law cannot be undermined



# Indian Evidence Act

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- ▶ Section 65B - Admissibility of electronic records in evidence
  - ▶ *any information contained in an electronic record, which is printed on paper, stored, recorded or copied in optical or magnetic media produced by a computer is deemed to be a document*
- ▶ Certificate mandatory
  - ▶ Section 65B(4) requires a certificate to be produced that inter alia
    - ▶ identifies the electronic record containing the statement and
    - ▶ describes the manner in which it is produced, and
    - ▶ gives particulars of the device involved in the production of the electronic record to show that the electronic record was produced by a computer,
  - ▶ either by a person occupying a responsible official position in relation to the operation of the relevant device, or the management of the relevant activities, whichever is appropriate.



# Polisetty Somasundaram [2023] 153 taxmann.com 591 (Visakh. - Trib.)

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- ▶ The CBDT has issued an Investigation Manual for the purpose of collecting Digital Evidence in the cases of search and seizure.
  - ▶ In para 2.6.3 of the said Manual, the CBDT has advised that the procedure has to be in consonance with the provisions of section 65B of the Indian Evidence Act. [Para 39]
- ▶ The provisions of section 65B(2)(d) was not followed by the revenue.
- ▶ Non-compliance of section 65B of the Indian Evidence Act renders the document inadmissible in the eye of law. [Para 43]
- ▶ The information contained in the seized pendrive could not be considered as admissible evidence



# Common Cause (A Registered Society)

## [2017] 77 taxmann.com 245 (SC)

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- ▶ Raids were conducted on the Birla and Sahara Group of Companies and incriminating materials in form of random sheets and loose papers, computer prints, hard disk, pen drives etc. were found. Evidence of certain highly incriminating money transactions were also found.
- ▶ Held that
  - ▶ *Loose sheets of papers are wholly irrelevant as evidence being not admissible under section 34 so as to constitute evidence with respect to the transactions mentioned therein being of no evidentiary value. The entire prosecution based upon such entries which led to the investigation was quashed by this Court. [Para 20]*



# Civil Procedure Code - Summons u/s 131

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Tool for making independent enquiries to examine claims of Assessee

Require them to produce necessary records to corroborate claims.

Examine witness on oath and take statements as Powers Co-terminus with Civil Court



# Right to Request for summon

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Assessee entitled to make specific request on which AO is duty bound to act

Independent enquiry u/s 131 or 133(6)

Order passed without acceding the request to enforce attendance of witness is bad in law

- Prakash Chandra Nahata (MP HC)
- EMC (Works) [1963] 49 ITR 650 (All);
- Continental Seeds & Chemical 1 SOT 393 (Del)



# Power to Commission

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Witness unable to attend

Residing Beyond limit of jurisdiction

Issue commission to local court

- Rule 4, Order 26, Code of Civil Procedure, 1908



# Impact of Violation of other laws

# Violation of other laws

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- ▶ Cash Salary
- ▶ PF provisions not complied
  - ▶ In **Addl.CIT v. Shree Ambica Auto Sales (ITA No.2042/AHD/2008)** held that *mere “non-deduction of PF” cannot be a ground for making disallowance of salary expenditure.*
  - ▶ **ITO v. Durgawati Jitendra Tiwari (ITA 5373/Mum/2010)** it is categorically held that *“merely because the assessee has not deducted the PF and ESIC on such payment of wages does not mean that the said payments of wages have not been incurred wholly and exclusively for the purpose of the business*



## DCIT v. Arjun Bhowmick (ITA 1071/Kol/2010)

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- ▶ *“Admittedly, assessee has produced a register, which contained payments to various labourers. Admittedly, this register does not contain the*
    - ▶ *addresses of the labourers*
    - ▶ *nor it contains revenue stamp,*
    - ▶ *nor is it signed by the Labour Department,*
    - ▶ *no PF has also been deducted.*
  - ▶ *Does all these wrongs in its entirety or individuality make the expenses incurred by the assessee deniable?*
  - ▶ *Can this defect be held to be changing the mode of payment of the assessee from one mode to another?*
  - ▶ *Here we would answer ‘no’..... A violation of the provisions of Provident Fund Act could have best lead to initiation of proceedings under the P.F. Act. Not maintaining the labour register as per the required Laws of the Labour Laws is a violation of the Labour Laws and not of the Income Tax Act. In short, violation of any law as long as the payment does not become illegal on account of such violation; the same cannot be hit under the Income Tax Act.”*
- 



## Violation of other laws and Income tax

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- ▶ Manglam Arts v. Pr. CIT [2023] 155 taxmann.com 373, by Income Tax Appellate Tribunal (ITAT), Jaipur, by upholding that late GST payments would be allowable in income tax law under Section 37 as a deduction.
- ▶ If penalty is not for deliberate violation of law the same should be allowed as deduction. [CIT v. Hero Cycles Ltd. [2009] 178 Taxman 484 (Punj. & Har.)].



# ***'ignorantia legis neminem excusat'***

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## ***Dilution of maxim***

- 'Ignorance of law is no excuse'

***Motilal Padampat Mills Ltd. v State of Uttar Pradesh reported in (1979) 118 ITR 326(SC).***

- *“It must be remembered that there is no presumption that every person knows the law. It is often said that everyone is presumed to know the law, but that is not a correct statement: there is no such maxim known to the law.”*



## Ignorance of law and Penalty

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- ▶ In **CIT v. Biju Patnaik [1978] 112 ITR 555 (Ori.)**, the assessee who was the Chief Minister of Orissa at the relevant time purchased a house in New Delhi the notional rental income of which he did not show in the return. Penalty under section 271(1)(c) was imposed on him by the IAC for the failure on that count and some others. The Tribunal deleted the penalty on the ground that the assessee was under the impression that the notional income of the house was not required to be shown in the return.



# 143(1) intimations - demands

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- ▶ Huge demands on portal
- ▶ Section 143(1) notices not responded
- ▶ No appeal filed against intimation and significant time lapsed.
  - ▶ Trusts / NGO's, Religious institutions
- ▶ Remedy
  - ▶ Reprocess the return
  - ▶ S.154 order shall be generated
  - ▶ File appeal against such order
  - ▶ Take fresh claim in appeal



# Portal

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- ▶ Profile not properly updated
- ▶ Email address and Primary mobile essential
- ▶ Communication only online
- ▶ If any proceedings started Assessee to regularly check
- ▶ Jurisprudence
  - ▶ AO need to physically issue notice if assessee's e-mail ID is not available in PAN database: HC [2023] 156 taxmann.com 168 (Bombay)



# AO to allow deduction even if not claimed and fairly assess

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- ▶ Circular No.14 (XI-35) of 1955, dated April 11, 1955
  - ▶ provides that the officers of the department must not take advantage of the ignorance of an assessee as to his rights and that although the responsibility for claiming refunds and reliefs rests with the assessee on whom it is imposed by law, yet
    - ▶ (a) the officers should draw the attention of the assesseees to any refund or relief to which they are entitled to but which they have omitted to claim for some reason or other, and
    - ▶ (b) freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs.
- ▶ Grievance – AO did not fairly assess and allowed expenses



## Fresh plea/claim in appeal

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AO cannot accept a new claim otherwise than revised return

However Appellate authorities can

- Pruthvi Brokers & Shareholders 252 CTR 151(Bom.).
- Chicago Pneumatics (ITAT Mum)



# Condonation petition for delay

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- ▶ It is a trite law that the appeal has to be decided on merits and not dismissed on technical reasons in the interest of justice ,
- ▶ Supreme Court in case of **Collector Land acquisition vs. Katji and Others 1987 SCR (2) 387**



## Ex parte orders – Inadequate opportunities

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- ▶ At the outset the Appellant submits that due to negligence and carelessness of the erstwhile counsel the Appellant's case could not be represented and thus was deprived from proper opportunity of being heard. In view of above it is submitted that the Appellant be allowed to submit additional evidences and all the records to enable it to put forth its case before Your Honours. In this regards the Appellant relies on following decisions:
  - ▶ In Rafiq v. Munshilal AIR 1981 SC 1400
  - ▶ Goswami Krishna MurarilalSarma v. DhanPrakash [1981] 4 SCC 574
  - ▶ LachiTewari v. Director of Land Records AIR 1984 SC 41



# Delay in filing audit reports

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- ▶ **Social Security Scheme of GICEA v. CIT(E) [2023]**  
147 taxmann.com 283 (Gujarat)
  - ▶ Where assessee was a public charitable trust for past 30 years and **substantially satisfied conditions** for availing exemption under section 11 it **should not be denied exemption** merely on bar of limitation especially when legislature had conferred wide discretionary powers to **condone such delay**”
- ▶ **Savitri Foundation v/s Income Tax Officer**
  - ▶ "Non-filing of Audit Report in Form 10B along with Return of Income is merely a procedural defect which is rectifiable. If the Audit Report was available with the assessee at the time of filing of Return of Income and was not filed due to bonafide reasons the benefit of exemption under section 11 cannot be denied if otherwise assessee is eligible to claim the same."



# Delay in filing return – 80P

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- ▶ In case of **The Lanjani Co-operative Agri Service Society Ltd vs. DCIT [2023] 146 taxmann.com 468 (Chandigarh - Trib.)** it is held that
  - ▶ *in the absence of the enabling provisions, the CPC Bangalore lacked the jurisdiction to make this disallowance in the order u/s 143(1). Accordingly, on facts, I find that the appeal of the assessee has to be allowed (para 14.2)*
- ▶ In case of **Lunidhar Seva Sahkari Mandali Ltd. vs. AO(CPC) [2023] 149 taxmann.com 28 (Rajkot - Trib.)** it is held that where assessee filed its return belatedly under section 139(4), claim of deduction under section 80P could not be denied to assessee only on basis that assessee did not file its return of income within due date under section 139(1) of the Act..
- ▶ Reliance is placed on decision of Hon'ble Kerala High Court in case of **Chirakkal Service Co-operative Bank Limited (2016) 95 CCH 0197**, the Hon'ble High Court has observed that denying the exemption under Section 80P of the Act merely on the ground of belated filing of return by the assessee is not justifiable.



# Case laws that changed the law

# We must know

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## **Bajaj Tempo's case (196 ITR 188)(SC)**

- a provision in the taxing statute for promoting growth and development is to be construed liberally and hence, even the restriction contained in such a provision has to be construed so as to advance the objective of the provision and not to frustrate it.

## **Vegetable Products 88 ITR 192 (SC)**

- If two reasonable constructions of a taxing provision are possible, that construction which favours the assessee must be adopted.
- 
- 

## We must know

---

*CIT v. Travancore Sugars & Chemicals Ltd.* [1973] 88 ITR 1 (SC).

- It is well-settled principle of law that in order to interpret an agreement one has to consider the substance of the agreement rather than its form. The agreement should be read as a whole and not in piecemeals.

*Gestetner V. CIT* (117 ITR 1,13)(SC).

- Circulars are not benevolent, the same are not binding on the assessee. See *Gestetner V. CIT* (117 ITR 1,13)(SC).
- 
- 

# We must know

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## Agrawal Warehousing and Leasing Ltd. vs. CIT (2002) 257 ITR 235 (MP)

- orders passed by the Tribunal are binding on all tax authorities functioning under the jurisdiction of Tribunal.

## Radhasoami Satsang -Vs- CIT (1992) 193 ITR 321 (SC)

- *"We are aware of the fact that, strictly speaking, res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. "*



# We must know

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## *LIC vs. CIT (219 ITR 410) (SC)*

- Assessee cannot be compelled to do something which is impossible for him or is beyond his control.

## *Nagappa Vs. CIT [1969] (73 ITR 626, 633) (SC);*

- Firmly settled principles that eschews double taxation

## *CIT v. Shoorji Vallabhadas and Co. (46 ITR 144)(SC);*

- it is only the “real” income, which can be subjected to tax
  - income-tax is a levy on “income” and not notional income.
- 



# We must know

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## Kishinchand Chellaram vs. CIT 125 ITR 173 (SC)

- Unless confronted third party material gathered at the back of Assessee cannot be used to draw adverse inference

## CIT vs. Sunita Dhadda (Supreme Court)

- AO has to provide the evidence to the assessee & grant opportunity of cross-examination. Secondary evidences cannot be relied on as if neither the person who prepared the documents nor the witnesses are produced. The violation of natural justice renders the assessment void. The Dept cannot be given a second chance
- 



# We must know

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## CIT vs. Excel Industries Ltd

- the dispute was only as to the year of taxability and as the rate of tax remained the same the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect. There was, therefore, no need for the Revenue to continue with this litigation when it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers. It is hoped that the Revenue implements its litigation policy a little more practically and a little more seriously

## Nagri Mills 33 ITR 681 (Bom)

- when the tax rates are same in both years, the department should not fritter away its energies in raising questions as to the year of deductibility/taxability.

## E.D. Sassoon & Co. Ltd. v. CIT [1954] 26 ITR 27 (SC)

- **income** can be said to have accrued or arisen only when a **right to receive** the amount in question is vested in the taxpayer.

# We must know

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## **Dhakeshwari Cotton Mills Ltd. V. CIT (26 ITR 775)**

- Income tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be more than bare suspicion to support the assessment.

## **S.A. Builders v. CIT (288 ITR 1)(SC)**

- the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize its profit. The income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own view point but that of a prudent businessman.
- 
- 

We must know

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## Tutikorin Alkali Chemicals and Fertilizers V. CIT (227 ITR 172)(SC)

- Treatment in accounts is not determinative of deductibility or otherwise under the Act.
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- 

# Wholly and exclusively

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Expression “*for the purpose of business*” is wider in scope than the expression “*for the purpose of earning profits*” and

‘*wholly and exclusively*’ does not mean ‘*necessarily*’.

## Jurisprudence

- Sasoon J. David and Co. vs. CIT (118 ITR 261)(SC)
- Bralco Metal Industries Pvt. Ltd. vs. CIT (206 ITR 477)(Bom)





Show cause notices

## Show Cause Notice – Established Principles of Law...

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- Mere letter or communication asking for payment is not a 'show cause notice'
  - ✓ **Metal Forgings vs. UOI (supra)**
  - ✓ **CC vs. Merchant Impex – 2012 (276) ELT 458 (Kar.)**
  - ✓ **Steel Ingots vs. UOI – 1988 (36) ELT 529 (MP)**
  - ✓ **Sidwell Refrigeration vs. CCE – 2002 (145) ELT 682 (Tri-Del)**

# Show Cause Notice – Established Principles of Law...

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## ❖ **Essentials of a Show Cause Notice:**

### • **Show Cause Notice must be in writing?**

✓ Voltas Ltd. vs. CCE – 2000 (121) ELT 802 (Tri-Mum.)

### • **Is oral show cause notice valid? Can a show cause notice be waived?**

✓ CC vs. Virgo Steels – 2002 (141) ELT 598 (SC)

✓ National Co-op. Bank Ltd. vs. CST (Audit)-2018 (15) GSTL 202 (Kar.)

✓ Circular No. 290/6/97-CX dt. 20.01.1997.

### • **Notice must contain all essential details**

✓ CCE vs. Brindavan Beverages (P) Ltd.-2007 (213) ELT 487 (SC)

✓ Mehta Pharmaceuticals vs. CCE -2003 (157) ELT 105 (Tri-Mum)

✓ CCE vs. Bhikhalal Dwarkadas-1998 (99) ELT 438 (Tribunal).

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## Show Cause Notice – Established Principles of Law...

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### ❖ **Show Cause Notice issued under the wrong provision – Is it valid?**

- ✓ N.B.Sanjana vs. The Elphinstone Spg. & Wvg. Mills Co.Ltd. - 1978 (2) J 399 (SC)
- ✓ BSE Brokers Forum vs. SEBI -2001 AIR SCW 628 (SC)
- ✓ CCE vs. Anoop Wires – (1988) 71 STC 262
- ✓ Shree Precoated Steels Ltd. vs CCE - 2006 (203) ELT 255 (Tribunal)



# Preparation of Defence against Show cause Notice

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## ❖ Study and Analysis of the SCN

- How to read the show cause notice?
  - ✓ Date of issue of SCN
  - ✓ Date of receipt of SCN
  - ✓ List of Relied upon documents (RUD)
  - ✓ Return of the non-relied upon documents
  - ✓ Statements and Free translation
  - ✓ Authority issuing the SCN.
- Facts of the case
- Basis of SCN/Demand
  - ✓ Scrutiny of Returns
  - ✓ Audit
  - ✓ Anti-evasion or Preventive action



# Preparation of Defence against Show cause Notice...

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## ❖ **Allegation/charges** in the SCN

- Nature of allegations
- Basis of allegations
- Evidence
- Interpretation of the statutory provisions
- Judgements
- Technical Report
- Third Party statements
- Discrepancies in Records
- CBDT Circulars
- Recurring demand
- Revenue's pending appeal

# Preparation of Defence against Show cause Notice...

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## ❖ **Drafting of Reply to SCN**

### • **Preparation of the defense reply to SCN**

- ✓ Background or Statement of facts
  - a. Brief background of the Assessee
  - b. Narration of the relevant facts
  - c. Chronology of the events/facts
- ✓ Relevant facts leading to the issue of SCN
- ✓ Exhibits
- ✓ Amount of tax, etc. demanded and other action proposed –  
statutory provisions invoked
- ✓ Gist of the allegations



# Preparation of Defence against Show cause Notice...

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## ❖ Grounds of Defence

- ✓ Merits of the case
  - ✓ Limitation
  - ✓ Computation
  - ✓ Challenge to the penal action and other action proposed
- 
- Importance of the Reply to the SCN
  - Furnishing of evidence in support of each contention
  - Judgements' compilation – Relevant para

## Adjudication Proceedings...

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- Fair and reasonable hearing
  - ✓ **Havacrum Rubber (P) Ltd. vs. Supdt. of C. Ex.-1983 (14) ELT 1685 (Kerala)**
  - ✓ **Aluminium Corporation of India Ltd. vs. UOI - 1978 (2) ELT J 320 (SC)**
- Reasoned and speaking Order is must:
  - ✓ Siemens Engineering and Manufacturing Co. of India Ltd. vs. UOI-AIR 1976 SC 1785
  - ✓ S. 75 (6)
- Order cannot go beyond or be contrary to the SCN:
  - ✓ **Saci Allied Products Ltd. vs. CCE – 2005 (183) ELT 225 (SC)**
  - ✓ **Hindustan Polymers Ltd. Vs. CCE – 1999 (106) ELT 12 (SC)**
- Can an officer review his own order?
  - **Dwarka Das vs. State of M. P.- AIR 1999 SC 1031**



# Do's & Don't's

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- **A few Do's**

- **Show Cause Notice:**

- ✓ Do make a note of the date of issue of the SCN
- ✓ Do make a note of the date of receipt of the SCN
- ✓ Do place acknowledgement of the receipt of the SCN by way of letter, etc.
- ✓ Do check that all RUDs are available with the SCN
- ✓ Do ask for the return of non-relied upon documents, if any
- ✓ Do ask for the free translation in in English of the statement/s, if recorded in a language other than English.



# Do's & Don't's...

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## ❖ Reply to SCN

- Do address each allegation levelled in the SCN
- Do provide evidence in support of each contention/ground raised
- Do check the latest status of the judgement being relied upon
- Do provide copies of judgements relied upon with the relevant para duly highlighted
- Do provide index and do page numbering of the reply
- Do provide legible (or typed) copy of each document relied upon.

## ❖ Adjudication Proceedings

- Do ensure that the Authorisation/Vakalatnama is on records, wherever required
- Do maintain Dress Protocol in VC/ hearing
- Do carry short notes/synopsis with you which would facilitate the oral submissions
- Do address each question put forth by the adjudicating authority.
- **Do speak slowly, softly and clearly**
- Do maintain decorum of the proceedings.

# Do's & Don't's...

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## ❖ A few Don'ts

- **Don't address any correspondence** by name of the officer.
- Don't seek adjournment on flimsy ground
- Don't use harsh or abusive language in any correspondence/ communication and reply
- **Don't go by 'headnotes'** of a judgement while relying upon it.
- Don't shout or be hysteric during the hearing
- Don't make irrelevant submissions or state irrelevant facts
- **Don't try to impress your client while arguing a case**
- **Don't 'copy and paste' pleadings**



# Cash transactions and Income tax implications



# Trigger points of inquiry

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- ▶ AIS/ TIS SFT report
  - ▶ Cash deposit over Rs.10 Lakhs in saving account
- ▶ Cash seizure in police checking
  - ▶ Cash loan
  - ▶ Cash balance
- ▶ Search and Survey transactions
  - ▶ Self
  - ▶ Other party
- ▶ Assessment
  - ▶ Cash income
  - ▶ Cash expenses



# Cash deposited in bank account

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Explained sources

Unexplained source

- S 68 to 69D
- S.115BBE - 84 percent



# Sources of cash

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- ▶ Opening Balance of cash as on the beginning of the year
- ▶ Cash withdrawn earlier from bank account
- ▶ Cash Sales /Other Incomes for the year
- ▶ Realisation from Debtors /Trade Advances
- ▶ Sale of assets – personal or business
- ▶ Unsecured Loans and Deposits
- ▶ Repayment of loans given to others
- ▶ Old savings out of past withdrawals
- ▶ On Money on sale of assets
- ▶ Agricultural Income or any other exempt income
- ▶ Gifts received
- ▶ Inheritance
- ▶ Charities and financial assistance by friends and relatives in difficult times



# Decisions

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The onus of proof in respect of cash deposited is certainly on the assessee

- [Kale Khan Mohammad Hanif v. CIT (1963) 50 ITR 1 (SC).]

Shifting of onus

- Once the assessee has adduced evidence to prima facie discharge the onus, the onus then shifts to the department to establish that the explanation offered by the assessee is not correct or that the evidences adduced are not sufficient to conclude the issue.



# Section 68 Unexplained Cash credit

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## **Cash credits.**

68. *Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:*

**Provided** that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

- (a) *the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*
- (b) *such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

**Provided further** that nothing contained in the first proviso or second proviso] shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.

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## S.68 on cash deposits in bank accounts

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No books of accounts maintained by Assessee

CIT v Bhaichand N Gandhi 141 ITR 67 Bom

- Money deposited in bank Relationship between bank and customer is that of Debtor and Creditor Not of Trustee and Beneficiary
- Passbook is just a copy of the account of customer in the books of bank
- Passbook is not maintained by bank as agent of customer
- Passbook is not books of accounts of the assessee



## S.68 on diary found in Search or Survey

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### Whether diary is a books of account?

- The book should be in relation to regular business of the assessee
- Unless the entry in the book brings in any cash credit in the business,
  - the same shall not be on par with the regular books of accounts
- Diary may have other implications but may still not be a book



# Cash earlier withdrawn from bank

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## **Cash withdrawn but kept at home for long period**

- **Jaya Agarwal vs. ITO [2018] 92 taxmann.com 108 (Delhi)** - Where assessee withdrew an amount from bank account for purchase of a property but re-deposited a part of said sum in same bank account as purchase deal could not be fructified, additions under section 68 of amount re-deposited was unjustified

## **No law prohibits Assessee to hold cash**

- **ITO vs. Deepali Sehgal (ITA No. 5660/Del/2012)** - it is not mandatory under any law of the land that an individual has to keep his/her savings in the bank account only and not as cash in hand



# Cash withdrawal inspite of cash in hand

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Manoj Indravadan Chokshi [2014] 50 taxmann.com 419 (Gujarat)

- Assessee had deposited huge amount of cash in his savings account.
- From books it was seen that withdrawal was made inspite of sufficient cash balance appearing in books

Probabilities

- the cash has been invested in unaccounted activities, income which is not offered. OR
- there is really no cash balance available with the assessee as shown in the cash book.

Held

- There is no limit of cash balance prescribed in the Act or Rules and
  - the AO cannot dictate to the appellant as to how to conduct business
- 
- 

# Cash withdrawal made by Directors/Partners

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- ▶ CIT v. Pesto Chem India Ltd. (1999) 240 ITR 672 (Del.)
  - ▶ assessee had shown certain withdrawals by its directors from the petty accounts from time to time to meet business expenses
  - ▶ amounts withdrawn by the directors were deposited in the bank or in the cash book when needed and for this purpose, the amounts were transferred from the imprest account to the bank account or in the cash book
- ▶ Held
  - ▶ the existing debit balance in the imprest account was adequate to cover the credits on any one date in the said imprest accounts
  - ▶ meaning thereby that the directors redeposited the amount either wholly or partly with the company out of the withdrawals of the money made by them from the assessee by debiting the same in the respective imprest accounts.



# Peak credit

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Various Deposits and Withdrawals as under :

Date	Withdrawal	Deposit	Balance
01-07-2019 (Op. Balance)	10000		10000
01-07-2019	420000		430000
06-07-2019	490000		920000
07-06-2020		200000	720000
08-06-2020		200000	520000
11-06-2020		150000	370000
12-06-2020		200000	170000
13-06-2020		225000	-55000
26-06-2020	83000		28000
20-11-2020	51000		79000
14-12-2020	128000		207000
07-01-2021	200000		407000



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# Cash deposit as well as withdrawal to be considered

## Accounts with cooperative societies/banks

- Cash deposits and withdrawals for unaccounted business

## AO's action

- Addition of whole of the credits in the bank account of Assessee

## Argument

- Since the credits are attributable to sale, only the '**profit**' component of the credits in the account can be considered.
- **considering only one side of an account** leads to erroneous results, and an account ought to be considered in its entirety, i.e. **both debits and credits** ought to be considered.



# Total sale is not income

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## Total sale cannot be regarded as profit of the Assessee

- even if it is alleged that **sales are made outside the books** of accounts,
- even in that case, only the element of net profit embedded in such sales can be added to the total income of the Appellant.

## Jurisprudence

- CIT v. Balchand Ajit Kumar - [2003] 263 ITR 610 (Madhya Pradesh)
- Man Mohan Sadani v. CIT - [2010] 188 Taxman 277 (Madhya Pradesh)
- CIT v. President Industries - [2002] 258 ITR 654 (Gujarat)



# Both sides should be considered

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## ITO v. Nisha Danish Merchant (I.T.A. NO. 4329/Mum/2009)

- not every figure of credit found in bank accounts which may constitute income and the account needs to be seen as a whole.
- In that case also only credit entries were considered and debit side of Bank Account was ignored by the AO

## ITO v. Shubh Medicine (ITA No. 456/Rjt/2008)

- it is held that the assessing officer has grossly erred in treating only one side of the account whereas he ought to have considered both the sides of the statement, the debits and the credits.

## ITO v. Rakesh Mehra (ITA No. 5463/Del/2011)

- it is observed that only credit sides cannot be considered and debit entries should also be considered by the Assessing Officer.

## CIT Vs. Ramesh Bhayana (296 ITR 101(P&H))

- AO cannot treat only one side (i.e.) credit side as bogus and make addition when he himself is accepting the debit side there of as correct".



# Cash Sales

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Whether  
Assessee  
required  
to give  
names  
and  
address  
in cash  
sales?

**R B Jessaram  
Fatehchand v CIT  
1970 75 ITR 33  
Bom**

*Held no requirement for  
maintaining address*

J M J Essential Oil  
Co v CIT 415 ITR  
17

however cash sales is  
not regular feature but  
made only in one month  
Addition will be justified



# Cash realized from debtors

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## Creation of liability vs Reduction from Assets

“found credited in books”

## Jurisprudence

- CIT v Sophia Finance Ltd 205 ITR 98 (Del)
  - *section 68 clearly permits an Income tax Officer to make enquiries with regard to the nature and source of any or all the sums credited in the books of account of the company **irrespective of the nomenclature** or the source indicated by the assessee*
- Rachman Springs P Ltd v DCIT 55 ITD 159 (Del)
  - Realization from debtors is reduction of assets and not subjected to section 68



# Section 44AD vs. S.68

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## Sec 44 AD

- overrides Section 28 to 43 C
- does not override sec 68

## Requirement of maintenance of books of accounts dispensed with

- Non maintenance of books Sec 68 may not apply - other Sections?

## Business receipts/Sale proceeds

- Section 68 won't apply
- Section 115BBE not applicable



# Section 44AD vs. S.68

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## CIT v Surinder Pal Anand 192 Taxman 264 (P H)

- *Once under the special provision, exemption from maintenance of books of account has been provided and presumptive tax at the rate of 8 per cent of the gross receipt itself is the basis for determining the taxable income, the **assessee is not under any obligation to explain individual entry of cash deposit in the bank, unless such entry has no nexus with the gross receipts***

## Thomas Eapen v ITO 180 ITD 741 (Cochin)

- Sec 44 AD is a presumptive section Profit is presumed at percentage
- Consequentially even expenses are presumed 92
- Both may be higher or lesser then presumed Not conclusive
- Under the situation it is against the spirit of section 44 AD to permit any addition under specified sections **unless the receipt is proved from other than business**
- **Asking the assessee to prove the same conclusively would defeat the purpose of presumptive tax scheme**



# Section 69 Unexplained Investment

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Cash deposit during demonetization period

Sufficient cash balance available

- Once the books of accounts of the assessee are accepted and the cash balance is sufficient to cover the amounts high denomination notes assessee is not required to prove source of receipt of such high denomination notes
  - **Lakshmi Rice Mills v CIT 1974 97 ITR 258 (Pat)**

Demonetization of 2016

- R S Diamonds India P Ltd v ACIT 2023 198 ITD 344 (Mum)
- Anantpur Kalpana v ITO 2022 194 ITD 702 (Bang)



# Cash deposited in parts

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No requirement that the cash should be deposited in one lot

No need to rush

- All government agencies always taking stand sufficient time is available for deposit.

Human probability

- Not earning interest
- but avoiding risk of being robbed with heavy cash in the long queues



# SBN accepted Illegally without permission

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Cooperative Societies were not permitted to accept

- Only banks were allowed to accept

Under misconception coop. societies, petrol pumps, etc accepted

Cash collected during Demo deposited in banks

AO treated the same as Unexplained cash credit/investment

Held

- Source is business or deposits from customers
  - Mere violation of RBI circular does not make it unexplained
- 
- 

# Cash sales accepting Demonetised notes

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Acceptance of SBNs against cash sales during 9 11 16 to 30 12 16

AO - SBNs were not legal tenders and hence could not be accepted by assessee

Section 5 of SBN (Cessation of Liabilities Act, 2017)

- Appointed Date as per Act 31 st December 2017

No restriction under any law to accept SBNs till 31 12 16

Can Explanation 1 to section 37 come into play

- Explanation deals with deduction u/s 37 1 not with receipt

Jurisprudence

- ITO v Sri Tatiparti Satyanarayana ITA No 76 /Viz 2021 Dt 16 3 2022
- Mrs Umamaheswari v ITO ITA No 527 Chny 2022 Dt 14 10 2022



# Survey during Demonetisation

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- ▶ **ACIT v. Hirapanna Jewellers 189 ITD 608 (Vishakhapatnam)**
- ▶ **Assessment order**
  - ▶ Cash Deposited Rs . 5.72 Crores
  - ▶ Survey conducted by DDIT (Inv.) in March 2017 - No Discrepancy found in records
  - ▶ No adverse observations in the Audited Accounts
  - ▶ Addition made for not providing KYC of customers and for very high sale on 8.11.16
  - ▶ One more survey by AO during assessment proceedings - No Discrepancy found
  - ▶ Addition made for the reason of human probability
- ▶ **CIT (A) deleted the addition**
  - ▶ No discrepancy in stock records and accounts
  - ▶ Newspaper cuttings showing large number of buyers of gold in entire country
- ▶ **Revenue appeal to Tribunal dismissed**
  - ▶ Relying on reduction of stock duly reflected
  - ▶ Suspicions could not be proved even during surveys.



# Cash gifts in marriage

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- ▶ Cash gifts received on marriage is customary in India
- ▶ Reasonable amount of gift cannot be denied
- ▶ Relevant factors
  - ▶ Social status of the assessee
  - ▶ Expenses incurred
  - ▶ Number of guests attending
- ▶ **Smt. Porkodi v. ITO** ITA No. 378/ Chny /2022 Dt. 14 10 22
  - ▶ Rs.4.50 Lakhs received as cash gift from brothers at the occasion of marriage of daughter accepted as valid.



# Gifts under Rs.50,000

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- ▶ Section 56 shall not apply
- ▶ However Section 68 may be applied if following not proved
  - ▶ Identity
  - ▶ Genuineness
  - ▶ creditworthiness



# Cash gifts

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## Section 56 vs. Section 68

- Offering of Income u/s 56 (2) does not rule out possibility u/s 68
- If General tests of section 68 i.e Identity capacity genuineness is established then 68 will be avoided and 56 can independently apply
- If not sec 68 will apply and then sec 56 cannot be applied since the presumption is that it is the assessee's own money

Sunrise Academy of Medical Specialities India P Ltd v ITO 409 ITR 109 (Kerala)

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Cash transaction found during  
Survey and Search

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## Section 69 A

Where in any financial year the assessee is **found to be the owner of any money, bullion, jewellery or other valuable article** and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the **assessee offers no explanation** about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the *explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory*, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

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# Excess Cash

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- ▶ Onus is on the assessee to explain
  - ▶ the nature and source of acquisition of money.
- ▶ Explanation offered should be satisfactory
  - ▶ If no satisfactory explanation given, the amount of money may be treated as income of the assessee for such financial year
- ▶ On facts
  - ▶ Merely stating that cash is on account of past bogus expenses will not be sufficient
  - ▶ Assessee will need to explain particular expense which was bogus as to how it was recorded as expense earlier and that no such expense was ever incurred



# Consider implications

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Interests of past years

Penalty u/s 270A or 271(1)(c)

Penalty u/s 271 AAD (applicable from 01.04.20)

- Penalty equal to amount of such false entry
- **Own admission of assessee penalty looks inevitable**

Prosecution u/s 276 C

Prosecution u/s 277 A

- to any person who had induced assessee to such falsification
- 
- 

# Shortage of cash

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**No provision for considering short cash as income**

**Department's contention - Undisclosed investment**

- No corresponding investment is found
- CIT v Continental Warehousing Corporation 374 ITR 645 Bom  
Significance of incriminating material found in search

**On the other hand to claim shortage as expenses**

- Needs to be supported by evidences that expense is incurred



# Undisclosed bank account

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## Income tax is tax on “income”

- All receipts are not income
- If assessee can demonstrate that the amount deposited is not income but the **same is gross receipt** only **profit element** can be subject to addition

Profit needs to be estimated on the basis of material on records

Reasonable to assume 8% as profit

## Jurisprudence

- Pr CIT v Shitalben Saurabh Vora 133 taxmann com 442
  - Substantial deposit but also corresponding withdrawals negligible balance in bank
  - Tribunal estimated 2% of gross receipts as income Tribunal order affirmed by HC
- Dineshbhai Dhansukhlal Mithaiwala v ITO 152 ITD 874 Ahd
  - profit estimated 3%



# Customer admitting transaction to be bogus

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Statement given by the customer in search that transaction is bogus

- Cannot be conclusive in assessee's case
- However it is significant information
- Assessee has onus to rebut the same suitably

No addition can be made if the assessee can support the sale with other evidences

- Quantitative records Reasonable Margins /Sales Matching with GST Records etc.

Actual sale made to some other person

- Does not call for any addition unless it is proved that margin earned from such other person is higher
  - Even if proved, only the difference of the margin earned can be subjected to addition
  - Not under S.68-69D
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# Agricultural income

# Agricultural income

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- ▶ Notices to Verify Agricultural income
  - ▶ Evidences
    - ▶ Land holding
    - ▶ P-I P-II
    - ▶ KCC / Agro credit account
    - ▶ Sale proceeds
    - ▶ Crop yield per acre
  - ▶ Issues
    - ▶ Bills and vouchers not available
    - ▶ Cash sale proceeds of agricultural produce



# Smt. Annakkalanjiam Mathivanan (ITA No. 2451/Chny/2018)

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- ▶ *“5. The Assessing Officer as well as the CIT(Appeals) have to appreciate the fact that the agricultural products in this country are traded in unorganized sector.*
  - ▶ *The workforce in the agricultural sector is unorganized. When the agricultural products are traded in unorganized sector in the country, expecting the assessee to produce bills for sale of agricultural produce is something which cannot be produced by the assessee.*
  - ▶ *Moreover, when the assessee engages labourers in carrying out agricultural operation and incur expenditure, producing vouchers is something uncalled for. What is to be seen is that whether the assessee has cultivated the land as claimed.*
  - ▶ *When the assessee claims that the land was cultivated with certain crops and when the Assessing Officer has taken up the assessment for examination after three or four years from the relevant financial year, no material evidence will be available on the land to show that the assessee has cultivated as claimed. The only evidence available is the record maintained by the State Government in its Revenue Department.”*
- 



# Shahnaj Bano; ITA No.443/Ind/04

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- ▶ **If a person has only agricultural income and no other income,**  
**then no addition can be made to the total income, then no**  
**addition can be made to the total income unless and until the**  
**AO proves that the assessee has any other source of income**  
which is taxable under the Income Tax Act.



# On money payment allegations

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- ▶ Survey/ Search on Builders
- ▶ Admission of on money receipt
- ▶ Jurisprudence
  - ▶ **Pukhraj Soni, (2019) 34 ITJ 489 (MP)**
  - ▶ Held that evidence in the nature of diary or loose papers which are not maintained in the course of business by the third party would not a good piece of evidence
  - ▶ **S.K. Gupta vs. DCIT 1999 063 IT J 0532 T DEL**
  - ▶ on raid at Estate agent certain loose sheet and torn papers were relating to purchase/sale of property which was stated to be Entries made related to some futuristic planning. It was held that there was no evidence to show that there was any undisclosed investment or any sale of any property without corroboration of such document with actual sale and purchase.



# Unaccounted / Undisclosed business

Undisclosed bank accounts  
Multistate cooperative societies

# Total Sale is not income

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- ▶ *Gujarat High Court in the case of CIT v. President Industries [2002] 258 ITR 654*
    - ▶ *held "dismissing the application for reference, that the amount of sales could not represent the income of the assessee who had not disclosed the sales. The sales only represented the price received by the seller of the goods; only the realisation of the excess over the cost incurred could form part of the profit included in the consideration for the sales. Since there was no finding to the effect that investment by way of incurring the cost in acquiring the goods which were sold had been made by the assessee and that the investment was also not disclosed, only the excess over the cost incurred could be treated as profit*
- 



## Lower Profits

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*Assessee may be incompetent or his method of business may be uneconomic.*

*No specific major Defects in books*

*Books cannot be rejected*

- **Pandit Bros. v. CIT** (26 ITR 159 )(Punj.)
- *S. Veeriah Reddiar v. CIT* [1960] 38 ITR 152 (Ker.)
- J.A. Trivedi (158 ITR 705)(MP)



# Comparable Instances

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When books are rejected the AO is bound to confront the comparable instances before applying GP/NP Rate

- K Baliah v. CIT (56 ITR 182)(Mys)
- Poliseti Subbaraidu & Co. v. CIT (69 ITR 738)(AP)
- Joseph Thomas & Bros.' case (68 ITR 796 (Ker.))
- BV Ashwathiah & Bros. (69 ITR 860)(Mys)



# Opening balance of unsecured loans

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Cash Credits pertaining to earlier years cannot be added in the later year

- C.I.T. vs. Prameshwar Bohra (2008) 301 ITR 404 (Raj).
- Usha Stud Farms (301 ITR 384)(Del)

Interest on such Loans

- No disallowance of Interest merely since the creditors did not respond to notices issued
- Such stand is not available with AO
- ***CIT v. P.K. Narayanan 108 Taxman 424 (Ker.)***



# Conjectures and Surmises

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No Disallowances on Conjectures and Surmises

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

- *ITO cannot make assessment on a pure guess without any evidence or material and hence, such ad hoc disallowance is unjustified.*



# Interest u/s 40A(2)(b)

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Interest on Unsecured Loans from relatives

Rate 18%

Bank Rate 13.25%

- **Balkishan Jagannath Goyal (I.T.A.No. 590/Ind/2009)**
  - *Prevailing market rate does not mean the basic Bank rate of interest*
  - *Other indirect and hidden cost incurred for obtaining loan relating to processing fee, inspection fee, stock audit fee, legal documentation charges and the stamp duty expenses for mortgage and hypothecation cannot be left out.*
  - *Bank loan is not available just on asking or personal guarantee, but so many other collateral securities are also insisted by the Bank in addition to hypothecation of stock worth more than the amount of loan sanctioned by the Bank, whereas loans from friends and relatives available just on asking depending upon personal relation.*



# Commission on Government Supplies

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## CIT. v. Electrical Construction Equipment Co. Ltd (182 ITR 510)

- Department observations that since public sector undertakings place orders through tenders, there is absolutely no necessity of securing services of a middleman'.
- Held In fact, it observed that such 'services become necessary for several purposes, such as passing information to the assessee about likely demand of their goods by the purchasers, helping the assessee in submitting tenders, to prepare, submit, follow and to inform at all stages the position of tenders and to help the assessee in getting the payments from buyers and also in case of dispute to get the matter settled.

Defence Minister has accepted necessity in Procurement

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Weapons to combat

# What is affidavit?

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Declaration of facts

Made in writing

Sworn before a person having authority

To administer oath

Ancient and time honoured practice

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## Important considerations

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Affidavit is not an evidence

Merely an admission (S.18 to 21 of IEA)

Abdul Rasheed AIR 1990 Cal 37

- Affidavit in english
  - No indication in affidavit that the text was explained in Hindi
  - Held such affidavit cannot be relied upon
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# Income tax and Affidavits

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Act, Rules recognise importance of Sworn statement

## Rule 10 ITAT Rules

- Where a fact which cannot be borne out by, or is contrary to the record is alleged, it shall be stated clearly and concisely and supported by duly sworn affidavit

Stay petitions, condonation application

Retraction of statements in survey, search

Writ petitions are decided on evidence furnished by Affidavits

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A part of it cannot be ignored

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## Glass line Equipments Co. 253 ITR 454 (Guj)

- While dealing with affidavits
- Revenue cannot choose to accept only one part in favour of revenue and
- Ignore rest portion wherein specific averments were made on facts
- Document has to be read as a whole



# Cross examination of affidavits

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## Mehta Parikh and Co. vs. CIT 30 ITR 181

- If revenue does not choose to cross examine the deponent
- With reference to statement in affidavit
- Not open to revenue to challenge the correctness of statement
- Assessee is entitled to assume that the authorities were satisfied with the Affidavit as sufficient proof on the point

## L. Sohanlal Gupta 33 ITR 786

- Affidavit cannot be rejected unless Assessee is cross examined or called upon to produce documentary proof in support of affidavit sworn by him



# Streedhan

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- ▶ Stridhan is a traditional practice that was primarily meant to provide women with some level of economic security in adverse situations like divorce, widowhood, etc. Among Hindus, it is interpreted in various ways; in general, stridhan is defined as that portion of a woman's wealth over which she alone has the power to sell, gift, mortgage, lease or exchange — whole or in parts. Usually, stridhan is passed from mother to daughter, unless the woman decides otherwise. Any dues from her can also be recovered from her stridhan. Besides the ornaments and trousseau given at marriage, stridhan also includes all the gifts of money, property, jewellery and so on received by the woman before, during and after marriage from her family, her husband's family, friends and even strangers. It includes property inherited by the woman from her family or husband's family; property received by her under a compromise, adverse possession or in lieu of maintenance; property obtained in partition; and property bought using proceeds from stridhan.
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# Ashok Chaddha v Income Tax Officer [2012] 20 taxmann.com 387 (Delhi)

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- ▶ *“After considering the aforesaid submissions we are of the view that addition made is totally arbitrary and is not founded on any cogent basis or evidence. We have to keep in mind that the assessee was married for more than 25-30 years. The jewellery in question is not very substantial. The learned counsel for the appellant/assessee is correct in her submission that it is a normal custom for woman to receive jewellery in the form of “stree dhan” or on other occasions such as birth of a child etc.*
  - ▶ *Collecting jewellery of 906.900 grams by a woman in a married life of 25-30 years is not abnormal. Furthermore, there was no valid and/or proper yardstick adopted by the Assessing Officer to treat only 400 grams as “reasonable allowance” and treat the other as “unexplained”. Matter would have been different if the quantum and value of the jewellery found was substantial.*
  - ▶ *We are, therefore, of the opinion that the findings of the Tribunal are totally perverse and far from the realities of life. In the peculiar facts of this case we answer the question in favour of the assessee and against the revenue thereby deleting the aforesaid addition of Rs.3,87,364/-.”*
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# Purchase/Sale of land in earlier year registered in subsequent year

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- ▶ Once property in question had undisputedly not been constructed during financial year under consideration then there was no legal action available on part of Assessing Officer to invoke provisions of section 69. - Asstt. CiT v. Pragnesh D. Thesia [2010] 41 SOT 22 (Ahd.)
- ▶ Where construction of house was spread over various years, Assessing Officer was not justified to include entire amount as undisclosed investment in construction of property in one year - Smt. Suman Goel v. iTO [2003] 1 SOT 127 (Delhi).
- ▶ Where assessee had made certain deposits in November 1987, addition on account of said deposits, being unexplained investment, could only be made in assessment year 1988- 89 and not in assessment year under consideration - Rajan H. Shinde v. Dy. CiT [2006] 103 iTD 360 (Pune) (TM).



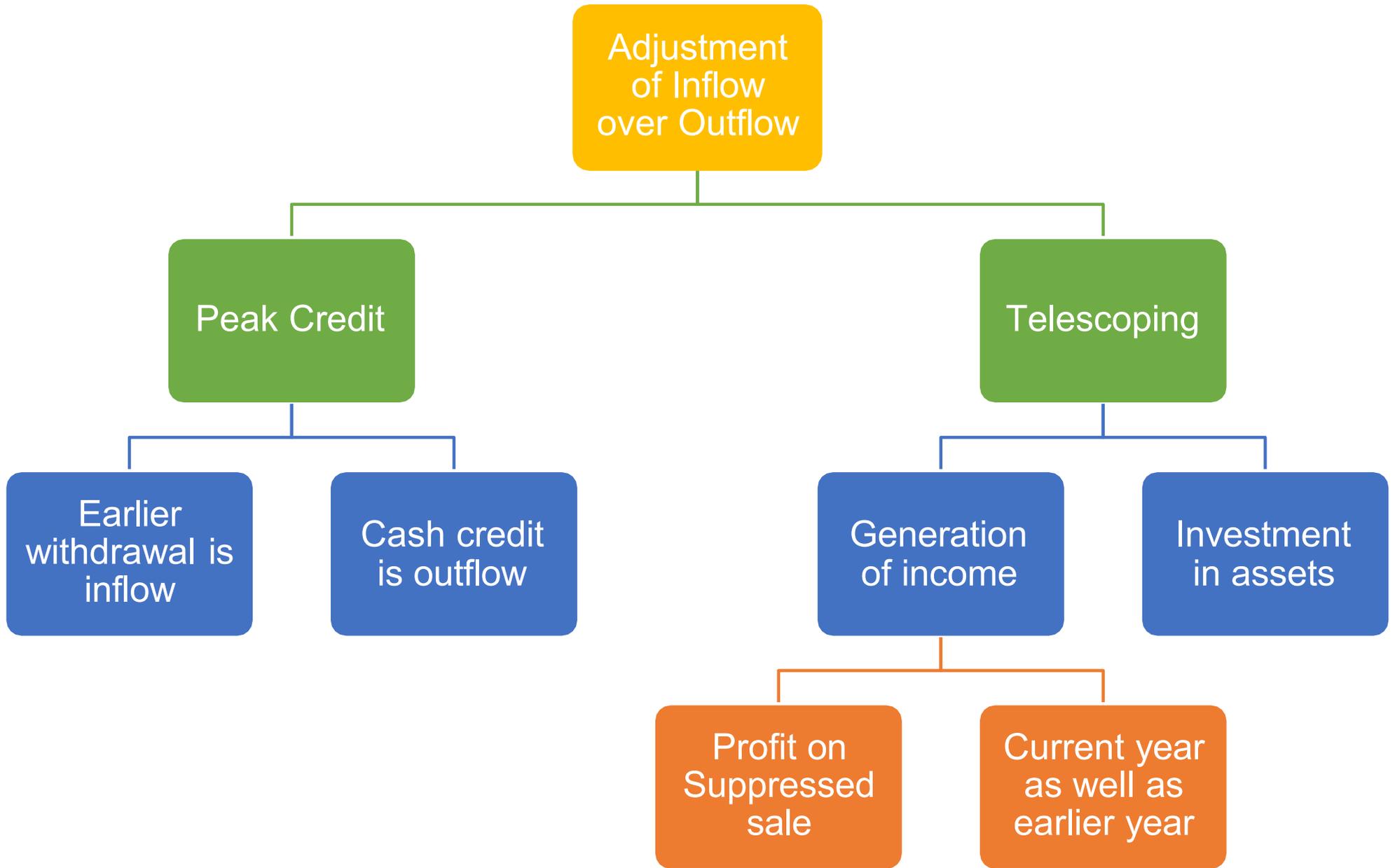
# Registration relates back to execution date of agreement

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- ▶ [Section 47](#) of the Registration Act, 1908, a registered document shall relate back to the date on which it is executed and not from the date on which it has been so registered.
- ▶ *Jitendra Mohan v. ITO* [\[2007\] 11 SOT 594 \(Delhi\)](#), it has been held that it is the date of allotment which is relevant for the purpose of computing a holding period and not the date of registration of conveyance deed ; that section 47 of the Registration Act lays down that registration of a document operates retrospectively
- ▶ *Gurbax Singh v. Kartar Singh* [\[2002\] 254 ITR 112 \(SC\)](#), it has been held that registration of a document would relate back to the date of its execution



**4.2** As regards the addition of land purchased from [REDACTED], the appellant has submitted that she had not purchased the said land during the year under consideration. The said land was purchased by her in the FY 2008-09. The appellant had made full payment for the purchase of said land in the FY 2008-09. The appellant has submitted the copy of sale deed along with the documents for the registration during the FY 2008-09. The registration of the said property was done on 01.04.2010. The appellant has submitted the copy of sale deed. After going through the sale deed, it is clear that the sale deed was executed on 19.03.2009 and pertained to FY 2008-09. The registration of the said property was done in the year under consideration. As not only the sale deed was executed on 19.03.2009 but the entire consideration was also paid in FY 2008-09; therefore, the said transaction does not pertain to the year under consideration. Hence, the addition on this count is hereby deleted.





# Peak Credit Theory

# Peak Credit Theory

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- ▶ **Sampath Iyengar's Law of Income-tax, Vol. 3, 9th edition, page 3547.** Accordingly, "Peak credit" theory –
  - ▶ One of the commonest defects of an assessee, where a single credit or number of credits appear in the books in the account of any particular person side by side with a number of debits is that they should all be arranged in serial order, that a credit following a debit entry should be treated as referable to the latter to the extent possible and that, not the aggregate but only the "peak" of the credit should be treated as unexplained.



## Steps before applying peak credit theory

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All the debits and credits must be arranged chronologically as per dates

Identify if debits made are of nature that they are available to explain credit

Any opening balance carried forward from earlier year cannot be added in different year

Overall peak balance which remains unexplained can only be added

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# Example of Peak credit

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Date	Particulars	Withdrawal	Deposit	Balance
01.04.2011	Cash		100	100
05.04.2011	Cash	50		50
10.04.2011	Cheque	30		20
15.04.2011	Cash		70	90

170?

120?

100?

- ▶ *This plea is generally accepted as it is logical and acceptable (whether the creditor is a genuine party or not), provided there is nothing in the material on record to show that a particular withdrawal/repayment could not have been available on the date of the subsequent credit*
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# Salient features of peak credit

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Where the assessee claims that all the deposits are genuine, the benefit of peak will not be available.

- *Bhaiyalal Shyam Behari v. CIT* [2005] 276 ITR 38 (All.)]

Where Revenue is able to prove the particular withdrawal is not available for redeposit/ recycling, the benefit of peak will not be available.

Unaccounted cash may be introduced in the books either as cash credit or as trade credit. Concept of peak would apply to trade credit also provided it is non-genuine.





# Telescoping

## Telescoping of Group cases

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- ▶ **15. A refinement or extension of the plea occurs where the credits appear not in the same account but in the accounts of different persons. Even then, if the genuineness of all the person is disbelieved and all the credits appearing in the different account are held to be the assessee's own moneys, the assessee will be entitled to set off and a determination of the peak credit after arranging all the credits in the chronological order."**

- ▶ **CIT v. Fertilizer Traders --(para 14 & 15)**

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