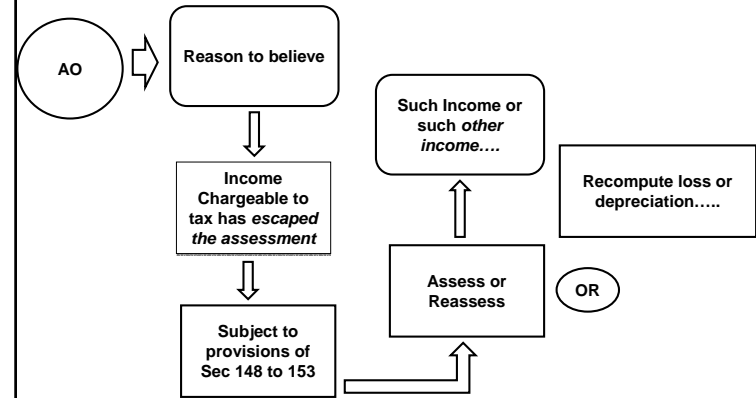


“Reassessment Provisions with Special Reference to Purchases from Suspicious Dealers –

Implication under Income Tax Act”

• Reepal Tralshawala, FCA

Section 147 – An Overview (1/2)



• Reepal Tralshawala, FCA

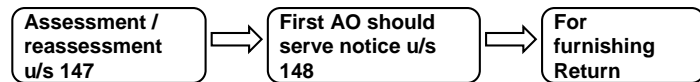
Section 147 – An Overview (2/2)

Cases where income chargeable to tax is deemed to have escaped assessment

- 1 • No return furnished, if income above taxable limit
- 2 • Return furnished but no assessment made and AO noticed the understatement of income or overstating loss
- 3 • Report u/s 92E not furnished
- 4 • Assessment done but income was underassessed, assessed at lower rate

• Reepal Tralshawala, FCA

Time limit for Notice (1/2)



Time limit for notice – Section 149

General case (not covered under following cases)

Sec 149(1)(a) Within 4 years from the end of relevant A.Y

When Income Escaped From Assessment >= Rs. 1 Lac

Sec 149 (1) (b) Within 6 years from the end of relevant A.Y

When income escaped from assessment relates to asset outside India

Sec 149 (1) (c) Within 16 years from the end of relevant A.Y

• Reepal Tralshawala, FCA

Time limit for Notice (2/2)

Provided

If Assessment done u/s 143(3) or 147 and 4 years after the end of relevant A.Y has been expired

No reassessment unless failure on the part of the assessee to make return u/s 139 / 142 / 148 or to disclose fully and truly all material facts

Not applicable in case of income in relation to asset located outside India

• Reepal Tralshawala,
FCA

Response to Initial Notice :

- Ask for reasons and without prejudice consider return filed originally as filed in response to notice
- If no return filed earlier then file the return of regular income or Nil return as the case may be

• Reepal Tralshawala,
FCA

Validity of Notice

➤ Service without giving reasons :

- When a notice under section 148 of the Income-tax Act, 1961, is issued, the proper course of action is to file the return and, if he so desires, to seek reasons for issuing the notices. **The assessing officer is bound to furnish reasons within a reasonable time.**

(GKN Driveshafts (India) Ltd. v/s D.C.I.T. (2003) 259 ITR 19 (SC))

• Reepal Tralshawala,
FCA

Validity of Notice (Continued)

➤ Service without giving reasons :

- The case was reopened u/s. 147
- The assessee had requested for the reasons recorded,
- But the same were not furnished till passing of the reassessment order.
- Held that the reassessment order cannot be upheld
(CIT Vs. Videsh Sanchar Nigam Ltd. 340 ITR 66 (2011))

• Reepal Tralshawala,
FCA

Validity of Notice (Continued)

➤ Service without giving reasons :

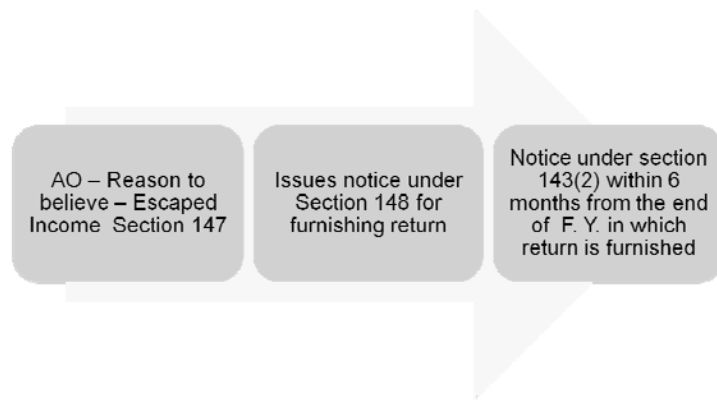
- Reason for notice for reassessment must be given and objection of assessee must be considered, order passed without following SC decision is not valid.

(Allana Cold Storage Ltd. v. ITO (2006) 287 ITR 1(Bom)

- Agarwal Metals & Alloys v. ACIT [2012] 346 ITR 64 (Bom)

• Reepal Tralshawala,
FCA

Issue of notice under section 143 (2)



• Reepal Tralshawala,
FCA

Section 147 without notice u/s 143 (2)

- It is mandatory for the AO to issue notice u/s 143 (2). The issuance and service of notice u/s 143 (2) is mandatory and not procedural. If the notice is not served within the prescribed period, the assessment order is invalid

ACIT v. Geno Pharmaceuticals Ltd. [2013] 214 Taxman 83 (Mag.)(Bom)
Saptagiri Finance & Investments v. ITO [2012] 210 Taxman 78 (Mag.)(Mad.)

- Reassessment proceedings completed without issue of notice u/s 143(2) are invalid

(Raj Kumar Chawla v. ITO 94 ITD 1 (Del) (SB))
(CIT vs. Mundra Nanvati (Bombay High Court) (2009) 227 CTR 387 Bom.)

- This is now subject to provisions of section 292BB of the Act

• Reepal Tralshawala,
FCA

Recording of Reasons

- Reasons important – generally reasons would contain reliance placed on information recd. from Investigation Wing and/or Sales tax Authorities

- AO's own mind for reasons for re-opening & not mere receipt of some information-

- Signature Hotels P. Ltd. v. ITO 338 ITR 51 (Del)
- CIT v. SFIL Stock Broking Ltd. 325 ITR 285 (Del)
- Sayaji Ind. Ltd. v. JCIT 336 ITR 360 (Guj) – after 4 years – not valid
- Sarthak Securities (P) Ltd. 329 ITR 110 (Del)
- CIT v. Atul Jain 212 CTR 42 (Del)
- CIT v. Kamdhenu Steel & Alloys Ltd. [2012] 206 Taxman 254 (Del)

• Reepal Tralshawala,
FCA

Recording of Reasons

- Reason to believe and not reason to suspect
 - Dass Friends Builder P. Ltd. v. DCIT (2006) 280 ITR 77 (All)
 - DCIT v. Raine Singh 125 TTJ 816 (Del)
 - A.A. Estate P. Ltd. v. ACIT (Mum), order dated 5/2/2014
- Reason need not accompany notice u/s.148
 - A.G. Holding P. Ltd. v. ITO [2012] 207 Taxman 117 (Mag.)(Del)
– only mandatory requirement is that reasons should be recorded before issuance of notice u/s.148
 - Reasons not recorded at time of issuance of 148 notice – notice ineffective – Gujarat Borosil Ltd. v. DCIT [2013] 217 Taxman 139 (Mag.)(Guj)

• Reepal Tralshawala,
FCA

Recording of Reasons

- Subsequent reasons – not valid
 - Reasons to be tested which is recorded prior to issue of notice u/s.148 – subsequent reasons or further reasons recorded not relevant for testing jurisdiction u/s.147
 - Northern Exim (P.) Ltd. v. DCIT [2012] 208 Taxman 175 (Mag.)(Del)
 - CIT v. Living Media India Ltd. 359 ITR 106 (Del)

• Reepal Tralshawala,
FCA

Re-opening of assessment-

- Original assessment u/s.143(1) or 143(3) – does not make difference – new tangible material required for valid reopening of assessment
 - CIT v. Kelvinator of India Ltd. 320 ITR 561 (SC)
 - CIT v. Orient Craft Ltd. (Del) 354 ITR 536 (Del)
 - Telco Dadajee Dhackjee Ltd. v. DCIT (Mum)(TM)
 - Delta Air Line INC v. ITO 153 TTJ 506 (Mum)
 - Mohan Gupta HUF v. CIT (Del) Order dt.28/1/14
- For understanding principles of reassessment – refer to – CIT v. Usha International Ltd. [2012] 348 ITR 485 (Del)(FB) which is after considering SC decision in CIT v. Kelvinator of India Ltd. 320 ITR 561 (SC)

Reepal Tralshawala,
FCA

- Ground for reopening of assessment fails – other additions / disallowances not sustainable
 - CIT v. Double Dot Finance Ltd. [2013] 214 Taxman 47 (Mag.)(Bom)
 - If any one ground of reopening survives – other additions / disallowances permissible
- Retrospective amendment – validity of reopening
 - Conflicting views
 - Not valid – Vodafone West Ltd. v. ACIT [2013] 354 ITR 562 (Guj) – beyond 4 years
 - Valid – Ester Industries Ltd. v. UOI [2013] 39 Taxman.com 107 (Del) – amendment constitutes tangible material for reopening

• Reepal Tralshawala,
FCA

- Audit Objection – not valid since reason to believe and opinion of AO and not third party
 - Cadila Healthcare Ltd. v. ACIT [2013] 355 ITR 393 (Guj)
 - Vodafone West Ltd. v. ACIT [2013] 354 ITR 562 (Guj)
 - Jagat Jayantilal Parikh v. DCIT 355 ITR 400 (Guj)
 - IL&FS Investment Managers Ltd. v. ITO [2008] 298 ITR 32 (Bom)
- Later decision of SC or HC – reopening not valid
 - DCIT v. Simplex Concrete Piles (India) Ltd. [2012] 254 CTR 221 (SC) – subsequent reversal of legal position by SC did not authorize department to reopen assessment.

• Reepal Tralshawala,
FCA

- Reopening on mere change of opinion – not valid
 - CIT v. Kelvinator of India Ltd. 320 ITR 561 (SC)
 - Ritu Investment P. Ltd. v. DCIT 345 ITR 214 (Del)
 - Artech Infosystem (P) Ltd. v. CIT [2012] 206 Taxman 432 (Del)
- Reopening after 4 years – only if failure to disclose material facts in return of income / computation
 - NYK Line (India) Ltd. v. DCIT [2012] 346 ITR 355 (Bom)
 - Kimplas Trenton Fittings Ltd. v. ACIT [2011] 340 ITR 299 (Bom)
 - CIT v. Amitabh Bachchan [2012] 349 ITR 76 (Bom)

• Reepal Tralshawala,
FCA

List of Suspicious dealers

List of Suspicious Dealers who has issued false bills without delivery of goods.

Disclaimer: If any dealer whose name is published has any grievances, he should contact the Office of DC Vigilance at, A-1, 8th Floor, Old Bldg, Vikrikar Bhavan, Mazgaon, Mumbai-400010.

Sr. No	TIN	Name Of Hawala Dealer
1	27890557451V	ALSTOM TRADING CO PVT LTD
2	27810650518V	AROMA INDUSTRIES
3	27650682810V	BAVIK ENTRPRISES
4	27780635742V	C N CORORATION
5	27490790180V	CAMEL PHARMACARE
6	27290316930V	CANDY FILTERS BOMBAY LTD
7	27910678205V	CITYBASE MULTITRADE PRIVATE LIMITED
8	27410554029V	CRYOTION TRADING CO PVT LTD
9	27700553724V	DURA BARREL PACKAGING PVT LTD
10	27490589681V	DURALLOY CUTTERS LTD

Reepal Tralshawala, FCA

List of Suspicious dealers

- If suppliers examined at the time of original assessment and now their name appears in the list ??

Reassessment can't be made on fresh opinion on the same facts or in view of changed legal position

(Sirpur Paper Mills Ltd. V. ITO (1978)114 ITR 404(AP))
(Maharaja Shree Umaid Mills Ltd. V. ITO (1962) 44 ITR 303 (Punj.))

- This would hold good only if no other material is available with the AO – If new tangible material available, reopening would be justified

• Reepal Tralshawala,
FCA

If the reassessment is on the basis of an affidavit – Whether valid reason

- A mere confessional statement by a third party (who is a lender of the assessee) that he was a mere name-lender and that all his transactions of loans were bogus, without naming the assessee as one who had obtained bogus loans, would not be sufficient to hold that the assessee's income had escaped assessment

(S.P. Agarwalla alias Sukhdeo Prasad Agarwalla v. ITO [1983] 140 ITR 1010 (Cal.).)

• Reepal Tralshawala,
FCA

21

Issues relating to Alleged Inflated / Bogus Purchases:

Inquiry before assessment-

- Provisions of section 142(2) & 142(3) has to be complied with by the AO:

➤ AO has to give opportunity to the assessee of being heard in respect of any material gathered on the basis of inquiry made u/s.142(2) or 142(2A), which is proposed to be utilized for purpose of assessment -

- CIT v. Kishenchand Chellaram 125 ITR 713 (SC) –

The Law as it stands as per the provisions of sec.142(3) is basically upheld and explained. Similar views that adverse inference cannot be drawn unless party put to notice and cross-examination allowed is held in-

➤ Kalra Glue Factory 167 ITR 498 (SC)

➤ U.M. Shah 90 ITR 396, 399 (Bom)

➤ Eastern Comm. Ent. 210 ITR 103 (Cal)

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

Assessment-

- Provisions of section 143(2) to be complied by Assessee:

➤ Once AO serves valid notice u/s.143(2) calling for details, the assessee has to file the necessary details and evidences in its possession in support of claim made.

➤ On the basis of the details submitted in respect of claims made, the AO may accept or reject the claims by passing order in writing u/s.143(3).

➤ There must be something more than bare suspicion to support the assessment or addition – Dhakeshwari Cotton Mills Ltd. v. CIT (1954) 26 ITR 775 (SC)

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

Purchases made by:

- Trader
- Manufacturer
- Trading & Manufacturing activity – combined
- Construction Industry
- Gem & Jewellery Industry especially diamonds
- Contractors / Civil Construction / Infrastructure facility, etc.
- Capital Asset – Depreciation claimed / not claimed

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

Impact on Trader:

- Stock Register Maintained / Not maintained
- Quantity tally possible / not possible – i.e. nexus of purchase with sales (correlation)
- GP on purchase and sales of disputed transaction
- Comparison of overall GP – same year / other years / industry where such alleged transaction is not involved
- Purchases remaining in closing stock partly / wholly
- No sales without purchases

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

Impact on Manufacturer:

- same as in case of trader
- Raw-material consumed for manufacturing – nexus/ correlation not possible – Yield – Comparison
- Input / output ratio – Quantity to match with consumption
- No finished goods without input of raw-materials

Impact on Trading & Manufacturing activity:

- All points taken as above to be checked to fit the case wherever possible
- Difficulty may arise in proving purchases for trading or manufacturing – if no nexus

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

Construction Industry:

- Difficulty in identification since no stock maintained
- No correlation possible – Purchases – used in construction – Sale of units, etc.
- Method of accounting relevant
- If Project completion method – reduce from WIP and profits increase in year of taxability – However, issue of penalty & other consequences remain
- If WIP method – it will reduce the income for the year since WIP reduced and profit on WIP offered to tax will also reduce – however, overall impact on profit remain – Issue also, how returned income will be reduced by AO

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

Gem & Jewellery Industry:

- Difficulty in identification if no stock maintained
- No correlation possible in Diamonds – since after Purchase – Assorted & sold – No nexus remain
- Again in Diamond – difficulty arises – since issue of cut/ clarity/ color, etc. remain – Hence, purchase & sales cannot be correlated even if stock register maintained.
- Difficulty arises in proving genuine purchases in such cases

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

Infrastructure Projects / Contractors / Civil Const.:

- Difficulty in identification & no correlation possible even if stock maintained
- Correlation possible of major item of product purchase with R.A. Bills, etc. in cases of Government Projects undertaken by comparing the actual quantity purchased and quantity utilized in construction
- Difficulty arises in proving genuine purchases in such cases

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

Capital Asset:

- How material utilized – whether as part of overall capital asset OR wholly new capital asset purchased
- In either case, can be proved without such part or asset – plant cannot work or finished goods cannot be produced
- If material used for construction of factory building, etc. – depends upon facts of case – but in such cases, issue of allowability of depreciation will only arise by reducing cost of asset

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

Evidences how far applicable/relevant:

- A) Evidence found from third parties:
- ❖ Statement recorded of third party;
 - ❖ Search / seizure or survey on third party – evidences gathered, etc. – proves issue of false bills
 - ❖ Accepted by third party as entry bills by filing Affidavit, etc.
 - ❖ Bank statement of third party proving cash withdrawn against cheque deposited, etc. – either from same account or different accounts

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

Evidences how far applicable/relevant:

- B) Evidence found from Assessee:
- ❖ Statement recorded of Assessee; Director; Employees, etc.;
 - ❖ Search / seizure or survey on Assessee – evidences gathered, etc. – proves issue of false bills OR no evidences found
 - ❖ Accepted by Assessee, etc. as entry bills taken OR not agreed in statement recorded, etc.
 - ❖ Evidences will also include computer data / pen drive, etc. & where such transactions data stored

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

Rebuttal of Evidences:

- ❖ Ask for copy of Statements recorded
- ❖ Ask for cross-examination
- ❖ Ask for copies of any other documentary evidence in possession of AO in respect of the alleged transactions
- ❖ File all the evidences in possession of Assessee to prove genuineness of transaction
- ❖ File confirmation letter / Affidavit of third party confirming transaction, if possible
- ❖ Purchases through brokers – only if brokerage paid and debited in P&L a/c. – Broker confirmation

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

Impact on assessment proceedings where:

- ❖ Copy of statement of third party not furnished
- ❖ Cross-examination not provided
- ❖ Other evidences of third party not provided
- ❖ Summons not issued to third parties inspite of specific requests
- ❖ Statement of third party, etc., retracted
- ❖ Retraction made by Assessee if initially admitted – Retraction when done – time-frame is important – Should not be mere after thought – Retraction basis and supporting, etc.

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

Whose Witness:

- ❖ Entire proceedings based on admission of third party of issuing bills
- ❖ Hence, witness of department
- ❖ Producing such party is duty of AO and not Assessee
- ❖ Even otherwise, Assessee can always ask to AO for issuing summons
- ❖ If witness of department – onus on AO to produce the party and discharge such onus

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

Onus when discharged:

- ❖ As witness of AO – onus gets discharged when cross-examination allowed by producing party
- ❖ Summons / notices issued to third party – served / not served
- ❖ If served and party does not respond, duty of AO to enforce attendance
- ❖ If returned back – remark of postal authorities important – whether party not found / unserved, etc.
- ❖ If party produced and confirms in cross-examination of issuing bills – onus may be said to be discharged by AO

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

Provisions attracted:

- ❖ Sections 68 to 69C;
- ❖ Section 40A(3);
- ❖ Section 37(1) / 43B
- ❖ Section 271 (1)(c)
- ❖ Section 276C / 277A

Peak Theory:

- If accepted by AO for making additions – time frame of credit relevant

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

General:

- ❖ Assessment of such third parties – Department stand - Important for Assessee to know – Hence to ask copy for the same;
- ❖ How returns filed by such third party – Balance sheet / profit and loss account of such third parties would be relevant;
- ❖ If company – can trace from ROC records
- ❖ VAT returns filed by third parties, etc. confirming purchase and sales
- ❖ What if Department has not taken any action against such third party?

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

General:

- ❖ Whether doctrine of peak theory applicable in case of regular transactions with such party?
- ❖ What happens in case of circular transactions where one of the parties in between is suspicious
- ❖ If inflated purchases, etc. proved – Can further addition be made on account of commission, etc. for purchasing such bills be made?
- ❖ Source of payment by account payee cheque – does AO have to prove cash returned back and/or purchase made in cash from grey market, if quantity nexus proved

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

Relevant Decisions:

- ❖ No sales without purchases
Balaji Textiles v. DCIT 49 ITD 177 (Mum)
- ❖ All details filed – source of investment/payment from books of account – bank account of third party does not belong to assessee – amounts withdrawn from such account not proved to be received by Assessee – addition based upon entries in books – third party not paid sales tax – Does not affect genuineness of transaction
Babulal C. Borana v. ITO 282 ITR 251 (Bom)
- ❖ CIT v. Nikunj Eximp Ent. P. Ltd. (Bom)(HC) – dated 17/12/2012

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

Relevant Decisions:

- ❖ Other similar decisions wherein held that third party may not have maintained proper records and in order to save his own skin may have admitted to be indulged in issuing bills
CIT v. M.K. Brothers 163 ITR 249 (Guj)
DCIT v. Adinath Industries 252 ITR 476 (Guj)
ITO v. Ghanshyama Steel Traders 107 Taxman 126 (Ahd)
DCIT v. Brahmaputra Steels P. Ltd. 122 Taxman 32 (Gauhati)
ITO v. Agarwal Steel Traders 77 Taxman 95 (Chd)

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

Relevant Decisions:

- ❖ Tolaram B. Sharma v. ITO, ITA Nos.2239 & 2291/Ahd/2004, Bench 'A', AY 2001-02. order dated 25/01/2008
- ❖ ITO v. Surana Traders 92 ITD 212 (Mum)
- ❖ ITO v. Permanand 107 TTJ 395 (Jodh.)
- ❖ Rajesh P. Soni v. ACIT 100 TTJ 892 (Ahd)
- ❖ ITO v. Arora Alloys Ltd. (2012) 12 ITR (Trib.) 263 (Chd.) – Addition made of unexplained exp. on sole basis of information received from Central Excise department – held not justified
- ❖ Free India Assurance Services Ltd. v. DCIT 132 ITD 60 (Mum)

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

Relevant Decisions:

- ❖ CIT v. Hi Lux Automative (P) Ltd. 183 Taxman 260 (Del) – summons returned unserved – few parties attended and confirmed transactions – all other relevant details filed
- ❖ G.G. Diamond International v. DCIT 104 TTJ 809 (Mum) – Issue of disallowance u/s.40A(3) – most parties appeared – no evidence amount reached back to assessee
- ❖ ITO v. Sun steel 92 TTJ 1126 (Ahd) – Unable to prove existence of few suppliers – AO to prove amounts came back to assessee – Addition leading to unreasonable / absurd GP – not justified

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

Relevant Decisions:

- ❖ Addition merely on third party statement – not justified
CIT v. Concorde Capital Management Co. Ltd. 334 ITR 346 (Del)
Dr. R.L. Narang 174 Taxman 96 (Chd)(Mag)
- ❖ Cross-examination not allowed – earlier statement has no relevance and cannot be relied upon – principles of natural justice violated
CIT v. SMC Share Brokers Ltd. 288 ITR 345 (Del)
CIT v. Kishenchand Chellaram 125 ITR 713 (SC)
Laxman S. Patel v. CIT 327 ITR 290 (Guj)

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

Relevant Decisions:

- ❖ Retraction of statement – no addition merely on basis of admission
Kailashben Manharlal Chokshi v. CIT 328 ITR 411 (Guj)
First Global Stock Broking P. Ltd. v. ACIT 115 TTJ 173 (Mum)
DCIT v. Pramukh Builders 112 ITD 179 (Ahd)(TM)
- ❖ Affidavit to be presumed to be correct unless otherwise proved
Mehta Parikh & Co. v. CIT 30 ITR 181 (SC)

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

Relevant Decisions:

- ❖ No addition merely on presumption – Suspicion however strong cannot take place of proof
Umacharan Shaw & Bros. v. CIT 37 ITR 271 (SC)
Dhakeshwari Cotton Mills v. CIT 26 ITR 775 (SC)
Sheo Narain Duli Chand v. CIT 72 ITR 766 (All.)
- ❖ Recent Trends – Decisions:
 - 361 ITR 206 (Del) CIT v. Sunrise Tooling System P. Ltd. – Books not rejected – entry recorded in sales tax records of seller – genuine transaction
 - 12.50% of disputed purchases added as income
 - CIT v. Sathyanarayan P. Rathi 351 ITR 150 (Guj)
 - CIT v. Bholenath Poly Fab P. Ltd. 355 ITR 290 (Guj)
 - CIT v. Simit P. Sheth 356 ITR 451 (Guj)

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

T) Relevant Decisions:

- ❖ Explanation cannot be rejected arbitrarily or capriciously, without sufficient grounds, on suspicion or on imaginary or irrelevant grounds –
Roshan Di Hatti v. CIT (1977) 107 ITR 938 (SC)
- ❖ Explanation not to be rejected merely because department unable to verify its correctness –
Hastimal (S) v. CIT (1963) 49 ITR 273 (Mad)
- ❖ Explanation not to be rejected on presumption that witness has come forward to give false evidence to oblige the assessee –
Sheo Narain Duli Chand v. CIT (1969) 72 ITR 766 (All)

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

T) Relevant Decisions:

Duty of AO to enforce attendance:

- ❖ It is duty of AO to enforce attendance of witness if his evidence is material – if AO does not exercise his power to call witness and examine him, he cannot treat deposits as suppressed income of assessee –
Nathu Ram Premchand v. CIT (1963) 49 ITR 561 (All)
CIT v. Brij Pal Sharma 333 ITR 229 (P&H)

Cf. Food Corp. of India v. Provident Fund Commissioner (1990) 1 SCC 68, 71 (SC) – if party requests for issuing summons to creditor, it is legal duty of AO to exercise powers.

However for issuing summons, assessee must furnish complete address of such person in absence of which, AO not duty bound to issue summons – Sri Jagdish Saran Shukla v. CIT (1988) 171 ITR 694, 697- 98 (All); Ram Kumar Jalan v. CIT (1976) 105 ITR 331 (Bom)

• Reepal Tralshawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

S) Some Food for Thought:

- ❖ What happens if AO only calls for producing parties in relevant scrutiny assessment without giving reference to any information or website details
- ❖ Whether money-laundering Act can be invoked against the assessee
- ❖ If admitted – consequences
 - ❖ Penalty – 100% to 300% (no scope of deletion) – CIT v. MAK Data Ltd. 352 ITR 1 (Del) affirmed by SC 358 ITR 593 (SC)
 - ❖ Prosecution – Could be launched and easily go against assessee since penalty confirmed proving guilt – May have to pay compounding fees (could be even 5 times) else imprisonment

• Reepal Traishawala,
FCA

Issues relating to Alleged Inflated / Bogus Purchases:

S) Some Food for Thought:

- ❖ GP addition – estimates – whether to agree for such additions before AO
- ❖ If agreed for addition in assessment proceedings by also signing in proceeding sheet – what is the fate – whether appeal can be filed contesting the additions
- ❖ Settlement Commission – how far advantageous as well as disadvantageous on such issues
- ❖ What if the sales tax payment is made by assessee in sales tax proceedings as against the set off claimed and thus accepted the liability

• Reepal Traishawala,
FCA



Reepal Traishawala

Chartered Accountant

Direct Line: +91 22 60502080

Mobile: +91 98205 57770

traishawalareepal@gmail.com

Disclaimer

The views contained in this presentation is solely that of the speaker and should not necessarily be construed as an opinion of the Organizers. Expert guidance is recommended before implementing any of the views. This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential or exempt from disclosure under applicable law. If you are not the intended recipient, any dissemination, distribution or copying of this communication is strictly prohibited. Whilst this message has been swept by anti-virus software, the recipient is solely responsible for ensuring that any e-mail or attachment the recipient receives, is virus free. The sender disclaims liabilities for any damages the recipient suffers as a consequence of receiving any virus through this mail.