*Page 1766 - 1774*

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

**[ISSN 2581-5369]**

**Volume 3 | Issue 3**

**2020**

# Section 143 of Income Tax Act, 1961

SRAVANI KURRA[1] AND GUNA SEKHAR KALLA[2]

## ABSTRACT

*Section 143(3) of the Income Tax Act, 1961 comes into play after the return is filed under Section 139 or as per the notice given under section 142(1) of the income Tax Act, 1961. The Assessing Officer has the power to send a notice if he has a reasonable necessity to know whether the assesse has filed any understated or over stated amount in the return under section 143(2) to the assesse, who has filed the return and verified by following the procedure as per Section 143(1) of Income Tax Act, 1961 called as Summary assessment without calling the assesse. If any Scrutiny is required then for that purpose he can ask the assesse to provide for any evidence or particular document needed for confirmation of the doubt or ask him to appear in the office on the particular date given in the notice served to the assesse. Then as per Section 143(3) the Assessing Officer if any evidence is called for, should consider that evidence produced before him and should pass a written order whether the return filed by assesse is valid or not. Also should calculate the amount of losses or refunds to which the assesse is entitled. There are also some provisos in this particular section. This entire scheme of assessment done by the assessing officer as per Section 143(3) is known as "Scrutiny Assessment" or "Regular Assessment". In the project the author would like to understand and analyze how this scrutiny assessment is followed in case to case basis. How can the scope of the scrutiny assessment is limited is also discussed by the author in the project.*

## I. INTRODUCTION TO "SCRUTINY ASSESSMENT" UNDER SEC 143 (3) OF INCOME TAX ACT, 1961

The word Assessment has been defined under Section 2(8) of the Income Tax Act, 1961. It has been mentioned as assessment includes reassessment and did not explain much in that Section 2(8). The procedure of the Assessment has been discussed in the chapter XIV of the Income Tax Act, 1961[3].Along with that Chapter XIV-B deals with the undisclosed amount assessment known as Blocked Assessment. And the Sections from 143 to 145 specifically deal with the process of assessment. The Assessment has been defined as the word which is

[1]Author is a student at Damodaram Sanjivayya National Law University, Sabbavaram, India.
[2] Author is a student at Damodaram Sanjivayya National Law University, Sabbavaram, India.
[3] Income Tax Act, 1961, [Act No. 43 of 1961]

 [ISSN 2581-5369]

quite comprehensive and does not carry any restrictive meaning. Thus it has to be construed in a wide sense not confined only to the computation of income but including the whole procedure and gamut of imposing the liability upon assesse.[4]They are various types of assessments that are contemplated by IT Act, 1961[5]. They are:

1. Self-assessment under section 140A
2. Assessment simply on the basis of return without adjustments referred to as intimation.
3. Limited scrutiny assessments under section 143(1)
4. Regular assessment under section 143(3)
5. Ex parte assessment under section 144
6. Accelerated assessment under sections 174, 174A and 175
7. Protective assessment recognised by the judiciary.

In the present paper as the author restricted to analyze the Scrutiny Assessment or Regular Assessment under Section 143(3) Income Tax Act, 1961 which is conducted after issuing the notice as per Section 143(2) of the Income Tax Act, 1961. So first we should analyze the scope of the issuance of notice under Section 143(2) and Section 142(1) so that we can understand whether the process taken up as per Section 143(3) of the Income Tax Act, 1961 as valid or not.

## II. Scope of the Notice under Section 143(2) & Section 142(1) of Income Tax Act, 1961

The section 142(1) of the Income Tax Act, 1961 provides that

*"A notice under this section can be issued and served on a person:—*

***(a)** Who has already made a return under any of the sub-sections of section 139; or*

***(b)** In whose case the time allowed for furnishing the return under sub-section (1) of section 139 has expired but no return has been made within this time."*

So in this section does not stipulate the time limit for giving notice and other details other than what is mentioned above. Even then the power to call for enquiry for not filing return under Section 142(1) can't be used in unbridled way and in violation of principles of natural

[4]C.A. Abraham v ITO, [1961] 41 ITR 425(India).
[5]Sunil H. Talati,*ASSESSMENT AND REASSESSMENT UNDER INCOME-TAX ACT, 1961*,125 TAXMAN 284 (ART), (2002).

 [ISSN 2581-5369]

justice. The information sought under the notices should be specific in nature or else assesse need not treat it as a proper issuance of notice and all the subsequent notices are also not treated as a part of notice.[6]

Before sending a notice under this Section 142(1) the application of mind is needed from the Assessing Officer. And two aspects should be considered before issuance of notice. Such as:

**(i)** The same are not already with the Income-tax Department and

**(ii)** It would be needed for the purpose of making an assessment for the year for which notice is being issued.[7]

So if he above two specified condition are per se violated by the Assessing Officer then the notice need not be considered as a legit one. Now considering the scope of notice issued under the Section 143(2)(ii) which is applicable in cases of scrutiny assessments, the following scheme of the provisions are adopted:—

"**(a)** A return of income (or loss) has been made under section 139 or in response to notice under section 142(1).

**(b)** The Assessing Officer considers it necessary or expedient to ensure that the assesse has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner.

**(c)** Hence a notice shall be served on the assesse under section 143(2)(ii). The notice can require the assesse either to attend or to produce any evidence, which the assesse may rely in support of the return.

**(d)** Such notice shall be served on the assesse within a period of 6 months from the end of the financial year in which return is furnished."

If the above is not followed and if there is no necessity or expedient nature of knowing information as mentioned in Sub Section (b) then it would be in violation of principles of natural justices asthe rights of the Assesse are violated. So this comes into play only after the return is filed by Assesse as per Section 139 or Section 142(1) but this Section 142(1) notice comes into picture irrespective of the return filed by the Assesse.[8] So in issuing notices, under the Section 143(2) for further conducting enquiry for Assessment to the return filed under Section 139 or Section 142(1) and Section 142(1) for filing return which the Assesse has not

[6]Calcutta Chromotype (P.)Ltd. v. ITO [1974] 95 ITR 595 (India).
[7]T.N. PANDEY, *SECTIONS 142(1) AND 143(2) DO NOT PERMIT ASSESSING OFFICERS TO MAKE ROVING ENQUIRIES*, 187 TAXMAN 5 (MAG), (2010).
[8] Id.

 [ISSN 2581-5369]

yet furnished, the scope should be maintained and should always tend to upheld the Principles of Natural Justice.

## III. Overview of Section 143(3) of Income Tax Act, 1961

With the time passing and with the Liberalization, Privatization and Globalization, the number of tax returns filed are also increasing and it is difficult for the income tax department to scrutiny each and every return filed. So they came out with the policy that is *"We trust you and you trust us"*. In this scenario the income tax department is accepting 99% of returns filed by the assesse. They simply give refund if it is due that is whatever the income - taxable, exempt or tax free – that is declared by the by the assesse is true and correct. Unfortunately, the step taken by income tax department is misused by the tax payers.

The income tax department used to send notice under Section 143(2) for the scrutiny assessment after the Form No. 6A is filed by the assesse citing the corrections and rectifications to the verification done by the Assessing Officer summarily under Section 143(1). This is the procedure before 1989. The Assesse used to raise objections after he is got the information regarding the changes by filing Form No. 6A and then the income tax department would send the notice to him under Section 143(2) asking to bring evidence for the assessment and the scrutiny is done as per Section 143(3) and an order would be passed.[9]

But later in 1989 an amendment was brought and changed that the Assessing officer would prima facie change the payable or refundable amounts in the returns filed by the Assesses' without any intimation and would send a notice under section 143(2) if any further information is required. The Assessing Officers should do verification under section 143(1) and change in a judicious manner but that ended up in more litigation than solving problems meticulously.

But after 1999 by bringing an amendment to Section 143(1), the mere acknowledgement is considered as intimation to the return filed by the Assesse. And the time limit for such intimation is considered as two years from the last date of year in which the income is assessable for the first time. Then if the assessing officer feels it expedient and necessary for knowing further information, he can send a notice to Assesse under Section 143(2) of the Income tax Act, 1961. And so the assesse would go to the office with requisite information on which he relied for filing the income tax return. So by following the procedure under section 143(3) an order would be passed judiciously by the Assessing Officer. But in most of the cases the Tax department now-a-days is accepting the returns filed by the Assesses'.

[9]Supra Note. 3

 [ISSN 2581-5369]

The notice should be served compulsorily under section 143(2) for the Scrutiny Assessment under Section 143(3). Such notice should be served within six months from the financial year in which the return is furnished. After that notice as mentioned above he should pass an order in writing after considering the relevant materials about

**a.** The total income or loss of the Assesse, and

**b.** The sum payable by or refundable to the assesse on the basis of such assessment order.

The notice is considered as deemed to be valid in certain circumstances for Scrutiny Assessment as per Section 292BB of the Income Tax Act, 1961[10] such as where Assesse appeared for the inquiry incorporated as per any section of the Income Tax Act, 1961 is deemed to be valid and is in accordance of the provisions of the Act. Such an Assesse is forbidden from pleading later that the notice is not served upon him or not served with in time or given in an improper way.

There are some consequences if the Section 143(2) is followed as per Section 271(1)(b)[11] where the penalty of Rs.10,000 would be levied if it is in contravention. This non-compliance may entail an exparte order, best judgment assessment under Section 144.[12]

## IV. Selection of Cases for Scrutiny Assessment:

In text, each and every return filed should undergo the process of Scrutiny Assessment but considering the number of returns filed it is next to impossible to scrutiny every return filed. There was a period where every return filed and having a monetary limit above 1 lakh is scrutinized as per Section 143(3) by sending a notice under Section 143(2) before that. But now-a-days are framed under the Section 143(3). The cases for this Scrutiny Assessment are selected through the process of Computer Assisted Scrutiny Selection[13] (CASS) and there is no place for subjectivity. The accepted norm is selecting few cases and scrutinizing them.

Along with the CASS process by which the returns are selected for Scrutiny Assessment for the purpose of Section 143(3), the cases/returns where there is information about the concealment of incomein any enquiry report, survey report or any other source can also be selected for scrutiny. For that the Assessing Officer should take permission of the senior officer so that such selection is judicious. This Scrutiny Assessment includes the Search and

[10]Section 292BB of the Income Tax Act, 1961, [Act No. 43 of 1961]
[11] Section 271(1)(b) of the Income Tax Act, 1961, [Act No. 43 of 1961]
[12] Section 144 of the Income Tax Act, 1961, [Act No. 43 of 1961]
[13]http://incometaxmanagement.com/Pages/Tax-Ready-Reckoner/Return-Of-Income/Scrutiny-Assessment-of-Return-of-Income-Section-143-3.html, Last Accessed on 9th June, 2020.

 [ISSN 2581-5369]

Seizure Assessments.

Also there is a provision for reopening cases by the assessing officer if there is a reasonable belief that any income might have escaped the assessment.[14] In those circumstances the Assessing Officer can reopen the cases and send a notice under Section 143(2) for further information about the return filed previously. Subsequently the Scrutiny Assessment procedure is followed as per Section 143(3) and an order in writing should be given. Such a case can be reopened only within six years and even in cases where earlier scrutiny assessment is done. This can be taken up only when there is reasonable belief or else it would be gross violation of Principles of Natural Justice.

Basically the urge to do scrutiny assessment is to ensure that the assesse has not understated the income, or computed excessive loss, or underpaid tax in any manner.[15]

## V. PROCEDURE FOR SCRUTINY ASSESSMENT:

The prescribed authority under section 143(2) who has to send the notice and conduct the enquiry as per Section 143(3) is an Income Tax Authority not below the rank of an Income-tax officer who has been authorised by the Central Board of Direct Taxes.[16] A specified procedure for Scrutiny assessment should be followed by upholding the principles of natural justice. As per procedure the AO can ask for evidence which includes books of accounts and other documents. He can rely on that information unless any contrary reliable material is available with Assessing Officer. Also if AO remains silent upon the affidavit filed then the assesse has a right to presume that the AO has satisfied with contents[17] but it does not mean that mere filing of Affidavit would discharge the Assesse from his liability in proving what is stated in the affidavit.[18]Any other further information should also be called for if necessary. The deductions should also be examined in the case of Proviso mentioned in Section 143(3) of the Income of Tax Act, 1961. It is an excellent chance for the AO for doing an enquiry of the entirefinancial assets of the Assesse for that Financial Year. The procedure is subjected to the Proviso of Sec 143(3).The proviso to Section 143(3) is as follows:

*"Provided that in the case of a—*

- ***(a)*** *Research association referred to in clause (21) of section 10;*
- ***(b)*** *News agency referred to in clause (22B) of section 10;*

[14]Section 147 of the Income Tax Act, 1961, [Act No. 43 of 1961]
[15] Section 143(2) of the Income Tax Act, 1961, [Act No. 43 of 1961]
[16] Supra Note. 9
[17]Mehta Parikh & Co. v. C.I.T, [1956] 30 ITR 181 (India).
[18]Smt. GunvantibaiRatilal v CIT, [1984] 146 ITR 140(India).

 [ISSN 2581-5369]

***(c)*** *Association or institution referred to in clause (23A) of section 10;*

***(d)*** *Institution referred to in clause (23B) of section 10;*

***(e)*** *Fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) of clause (23C) of section 10,*

*which is required to furnish the return of income under sub-section (4C) of section 139, no order making an assessment of the total income or loss of such research association, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical institution, shall be made by the Assessing Officer, without giving effect to the provisions of section 10, unless—*

***(i)*** *The Assessing Officer has intimated the Central Government or the prescribed authority the contravention of the provisions of clause (21) or clause (22B) or clause (23A) or clause (23B) or sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, as the case may be, by such research association, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical institution, where in his view such contravention has taken place; and*

***(ii)*** *The approval granted to such research association or other association or fund or trust or institution or university or other educational institution or hospital or other medical institution has been withdrawn or notification issued in respect of such news agency or fund or trust or institution has been rescinded:*

*Provided further that where the Assessing Officer is satisfied that the activities of the university, college or other institution referred to in clause (ii) and clause (iii) of sub-section (1) of section 35 are not being carried out in accordance with all or any of the conditions subject to which such university, college or other institution was approved, he may, after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned university, college or other institution, recommend to the Central Government to withdraw the approval and that Government may by order, withdraw the approval and forward a copy of the order to the concerned university, college or other institution and the Assessing Officer:*

*Provided also that notwithstanding anything contained in the first and the second provisos, no effect shall be given by the Assessing Officer to the provisions of clause*

 [ISSN 2581-5369]

*(23C) of section 10 in the case of a trust or institution for a previous year, if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in such previous year, whether or not the approval granted to such trust or institution or notification issued in respect of such trust or institution has been withdrawn or rescinded."*

So as mentioned in the provisothe procedure that is deductions or exemptions should be considered before finalizing the amount payable and refundable to the specified categories after scrutinizing the evidence collected unless those categories are in violation of law. In such scenario without deductions and exemptions normally they can verify and in the case where an Assesse did not specify any income which can be deducted can't be deducted later that is if deductible income is not included then at the time of verification they won't consider and finalize the amount payable/refundable.

The Assessing Officer should decide based on the strength of the information given and also with upholding principles of natural justice. As per ***State of Orissa v Maharaja Shri B.P Singh Deo***[19], the court held that "The Assessing Officer should not compute merely basing on the guesswork, conjuncture or speculation. If the order suffers from even failure to indicate the reliance of material or basis of income assessed, such order is liable to be set aside if not quashed. Therefore the assessing officer should relate to reliable information". Also the information obtained by private inquiry can be used by AO[20] and it is implicit from the provisions of Assessment. And the local inquiries should be used for the current year and not for the previous years as held in the case of ***CIT v LN Dalmia***.[21]

The principles of natural justice should also be followed in the proceedings before the Assessing Officer even though they are quasi-judicial proceedings[22]. The principle of Audi AlteramPartem should be followed and can't arbitrarily conclude proceedings and give a written order[23].Such hearing should not be a mere formality but effective, real and non-illusionary. This rule is a highly effective rule for a fair and just decision and it is a very healthy check on the abuse or misuse[24] of power. And other important principle of natural justice is Absence of Bias. So if an AO while conducting the enquiry under Section 143(3) is biased for example, he is sitting as a judge in appeal stage and also passed the order against which appeal has been raisedby the Assesse then it would be of incorrigible violation of

[19]State of Orissa v Maharaja Shri B.P Singh Deo, [1970] 76 ITR 690 (SC)(India).
[20]CIT v Khemchand, [1940] 8 ITR 159/ 178 (India).
[21]CIT v LN Dalmia, [1994] 207 ITR 89 (India).
[22]Dhakeswari Cotton Mills Ltd v CIT, [1954] 26 ITR 775 (India).
[23] M.Chocklingam M. Meyyappan v CIT, [1963] 48 ITR 34(India).
[24] Supra Note. 3

principles of natural justice as he would be the interested person and one can't be *Nemo Judex In Causa Sua*.

So while conducting the proceedings upholding principles of natural justice is also of utmost importance and one should act according to it. Such order in writing should be supported by the reasons for such decision and it is a mandatory one. And such order in writing should be sufficient to reflect[25]-

**a.** That there is a proper application of mind,

**b.** That reliance has been placed on facts,

**c.** That materials are available culminating into this order, and

**d.** That decided undisputed case-laws or judicial pronouncements have been followed.

By following the above mentioned ingredients Assessing Officer should pass aprecise order in writing after finalizing the proceedings.

## VI. CONCLUSION

So in the case of Scrutiny Assessment/ Regular Assessment the principles of natural justice should be upheld without any prejudice even though it is Quasi-Judicial proceedings. The Assessing Officer should follow a fixed and reasonable procedure in sorting out cases for Scrutiny and he should not select it subjectively. As already mentioned Computer Assisted Scrutiny Selection should be followed

*****

[25] Id.

 [ISSN 2581-5369]