



57th Residential Refresher Course

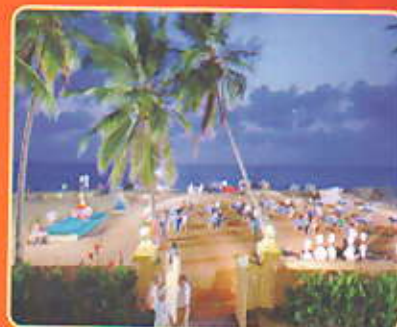
8 to 11 April, 2016

President: DHRUVEN V. SHAH

Hon. Secretary: KARTIKEY B. SHAH



UDAY SAMUDRA
Leisure Beach Hotel & Spa
Kovalam, Kerala



FACULTY FELLOW

SHRI UPENDRA J. BHATT
(Advocate)

SHRI SHAILESH C. DESAI
(Advocate)

SHRI SAMIR S. JANI
(Advocate)

SHRI SHAIVAL U. BHATT
(Advocate)

VICE PRESIDENT
CHAITANYA A. NAYAK

HON. JT. SECRETARY
BHUPENDRA K. THAKKAR

HON. TREASURER
ASHUTOSH R. THAKKAR

IPP
RONAK R. SHETH

MANAGING COMMITTEE

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RAJESH J. SHAH

KANAIYALAL H. VIDHVANI
BHARATKUMAR H. PATEL

CA RAJENDRA R. KABRA
CA NIKIT D. SHAH

INVITEE MEMBER
SHAILESH C. DESAI
BAKUL R. PARIKH
DARSHAN S. JANI

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P- 1. 1st Technical Session

SEA VIEW HALL

Date : 09/04/2016

Time : 10.00 am to 1.30 pm

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P- 2. 2nd Technical Session

SEA VIEW HALL

Date : 11/04/2016

Time : 3.00 pm to 5.00 pm

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TRAVEL SUKHA

420 - 4th Floor, Titanium City
Centre Mall, Anandnagar Road,
Satellite, Ahmedabad - 380015.

Dear Traveler,

5th April, 2016

Warmest Greetings from TRAVEL SUKHA!!

We feel obliged to introduce our ambitious venture "**TRAVEL SUKHA**" as an entity which takes care of any tour and travel requirements of its esteemed clients at Global Level. Since inception TRAVEL SUKHA has been venturing into new geographic arena and making utmost effort to make the best deal available to its clients.

TRAVEL SUKHA is a one stop prestigious enterprise that offers the complete range of travel related services, superior knowledge, efficient planning, and an ability to anticipate and resolve potential problems along the way are the reasons behind the success.

We assure to make your travel fun, safe, economical, informative, comfortable and memorable.

We are the architect of tailor made tour package designing in tour packages for domestic, inbound and outbound. We further providing domestic and international ticketing, worldwide hotel booking, visa and passport, foreign exchange, travel insurance, local and international transfers are also included in our services.

We are delighted that you have opt the services of Travel Sukha. WE further acknowledge your whole hearted support and active participation in forthcoming 57th Residential Refresher Course (RRC) organized by one of the oldest professional Association, Income Tax Bar Association, Ahmedabad. We sincerely be thankful to Mr. Dhruven V. Shah & Mr. Vishves A. Shah who have taken lots of pain for managing this event memorable.

We hope you are as excited as we are, we look forward to seeing you onboard. If you have require any assistance, concerns or have any specific requirements, please contact the Tour Manager and we'll be happy to help you out.

We will be glad to serve you always in all ways

We look forward for building a long term business relationship and assure you of our very best always.

Happy Journey in Advance.

Yours truly,

DHRUVPEN SHAH
CEO- Travel Sukha

NOTES:-

THINGS TO CARRY:-

It is requested to carry your valid Photo ID (Passport, Driving License, Voter ID, Adhaar Card, and School ID- In case of Minor); Air Ticket

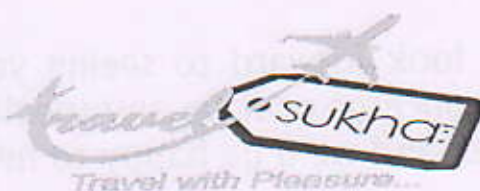
BAGGAGE ALLOWANCE:-

All Tickets would be eligible for baggage allowance of 15 Kgs for Check in per passenger while 07 Kgs will be hand baggage on domestic sectors on the entire spectrum of Economy class.

CHECK-IN TIME:-

All passengers are requested to report at the airport 03 hours prior to departure. As it is group departure it will be convenient to you for easy check in process.

For your ease have attached day-wise schedule cum Itinerary about your tour!!



TRAVEL SUKHA

420 - 4th Floor, Titanium City
Centre Mall, Anandnagar Road,
Satellite, Ahmedabad - 380015.

ITINERARY CUM SCHEDULE OF PROGRAMME

DAY- 01 - 8TH APRIL 2016:
TRIVANDRUM (ARRIVAL) - POOVAR- KOVALAM



02.15 am

Wel - Come Reporting At Domestic Air Port of Sardar Vallabhbhai Patel International Airport, Ahmedabad, Terminal -1.

02.20 am

Reporting to Mr. Aashutosh Thakkar on 9824500479

02.30 am

Keep Ready Your Air - Ticket and Photo Identity Proof at Check In Entry Gate

Proceed For Boarding Pass & Baggage (Not More Than 15 kg) at Jet Airways Counter.

If you are taking any handbag (As per the Guideline mentioned in Ticket) or bag with you ensure that you tie airline tag to your bag.

After getting the boarding pass you need to get your hand bag checked (if you are carrying any) and to get your boarding pass stamped.

	On your boarding pass gate number will be mentioned just look at the Screen and go towards that boarding gate.
03.20 am	Final check out for check in Jet Airways Flight No: 9W-411.
04.20 am	Departure Jet Airways Flight No : 9W-411 From AMD – BOM
05.40 am	Arrival At Mumbai Domestic Air Port
06.00 am	Proceed for TRV Flight Gate No : Jet Airways Flight No: 9W-388.
06.40 am	Departure Jet Airways Flight No : 9W-388 From BOM- TRV
09.00 am	Arrival At Trivanduramampuram, Kerala
09.30 am	2*2 AC Coach (13.5 Kms) TRV – KOVALAM
10.15 am	Arrival At Uday Samudra Leisure Beach Hotel & Spa, Kovalam, Kerala.
10.30 am	Traditional Wel Come with Aarti - Tikka
10.45 am	Check In Allotted Room - From Front Desk
12.00 pm	Lunch @
12.00 to 04.00 pm	Leisure Time at Hotel
4.00 to 4.30 pm	Tea – Coffee with Snacks
4.30 pm	Proceed For Poovar Island

Poovar is a popular tourist town in the Trivandrum district of Kerala South India. This village is almost at the southern tip of Trivandrum while the next village, Pozhiyoor, marks the end of Kerala. Poovar is truly a

porthole into paradise. The area is plentiful in well preserved local Plants with hundreds of species of spices, birds, exotic flowers, Compliments with banana and coconut groves. It covers a wide range of backwater cruises though the Neyyar Lake in Poovar.



Note: Rs 500/- per person will be charged extra for the same payable directly at Poovar island.

8.30 pm onwards

Presidential cocktail party followed by light music and dinner.

OVERNIGHT STAY AT THE HOTEL

**DAY – 02 – 9TH APRIL:
KOVALAM – TRIVANDRUM - KOVALAM**

6.30 to 7.30 am	Bed Tea in Room – Tea Maker
7.30 to 9.30 am	Break Fast @ Restaurant
10.00 am	Group Photo Session (Male – delegate – Tie Compulsory) (Female – Preferably in Sarees / Formal Dress)
	Proceed for Conference Hall SEA VIEW HALL
10.30 am	Inaugural Session with Lighting of Lamps by Hon'ble Pr. CCIT(Kerala) & DG(Kochi) - Ravi Kr. P.R. Nair
10.30 am to 10.40 am	Wel - Come Speech by Shri. Dhruven V. Shah – President I.T. Bar Asso,
10.40 am to 10.45 am	Floral Wel - Come Ravi Kr. P.R. Nair Pr. CCIT – Dhruven V. Shah - President IT Bar Memnto :- Ravi Kr. P.R. Nair Pr. CCIT – -Kartikey B. Shah – Hon Sec IT Bar
10.45 am to 10.55 am	Inaugural Wel Come Speech By Ravi Kr. P.R. Nair Pr. CCIT (Kerala).
10.55 am to 11.00 am	Vote of Thanks by Shri. Kartikey B. Shah
11.00 am to 11.10 am	Short Break
11.10 am to 11.15 am	FLORAL WEL – COME (a) Shri. Upendra Bhatt – Shri Bakul I. Shah (b) Shri. Samir S. Jani - Smt. Gauri Popat
11.15 am to 12.00 pm	1 st Technical Session by Shri. Upendra J. Bhatt (Advocate) (Sr.Past President IT Bar Asso.,)

12.00 pm to 12.45 pm	2 nd Technical Session by Shri. Samir S. Jani – Advocate (VP-AIFTP), (Past President – AGFTC)
12.45 pm to 01.00 pm	<u>MEMENTO :-</u> SHRI. UPENDRA J. BHATT – Shri. Jayprakash Soni (Past President IT Bar Association) SHRI. SAMIR S. JANI - Shri. Pramod Popat (Past President IT Bar Association)
01.00 pm to 1.15 pm	Vote of Thanks by Shri. Chaitanya A. Nayak Vice President – IT Bar Association
1.15 pm	Proceed for Lunch @ Restaurant
2.00 pm to 4.00pm	Leisure Time @ Hotel
4.00 pm to 4.30 pm	Tea – Coffee
4.30 pm	Proceed for Padmanabhaswami Temple –
5.30 pm to 7.30 pm	Shopping in Market – Free time
7.45 pm	Proceed for Hotel
8.30 pm	Dinner with light Music @ Restaurant
	OVER NIGHT STAY AT HOTEL

Thiruvananthapuram is a destination for domestic and international tourists. There are many tourist destinations in or near the city including Kovalam beach, Sanghumukham Beach

Main Attractions:



Sree Chitra Art Gallery is an art gallery in Thiruvananthapuram, India, established in 1935. It is located towards the northern side of the Napier Museum. The gallery features a unique collection of traditional and contemporary paintings, including the works of Raja Ravi Varma, Nicholas Roerich, Svetoslav Roerich, Jamini Roy, Rabindranath Tagore, V. S. Valiathan, C. Raja Raja Varma, and K. C. S. Paniker. There are approximately 1100 paintings at the gallery. The art gallery has on display works from the Mughal, Rajput, Bengal, Rajastani, and Tanjore schools of art. It also has an oriental collection of Chinese, Japanese, and Balinese paintings, Tibetan Thangka, and unique collections of Indian mural paintings from pre-historic times.

Note: Rs 10/- per person will be entry ticket fee.

The Napier museum houses a rare collection of archaeological and historic artifacts, bronze idols, ancient ornaments, a temple chariot and ivory carvings. It also contains the Sri Chitra Art Gallery, which contains works from Raja Ravi Varma and Nicholas Roerich, as well as examples of Mughal and Tanjore art. The Museum grounds also hold a Zoological garden, which is one of the oldest in India. This Zoo was established in 1857 and is spread over 55 acres (220,000 m²) of land.

Note: Rs 20/- per person will be entry ticket fee.

Padmanabhaswami temple is located in Thiruvananthapuram, Kerala, India. The temple is built in an intricate fusion of the indigenous Kerala style and the Dravidian style of architecture associated with the temples located in the neighboring state of Tamil Nadu, featuring high walls, and a 16th-century Gopuram. While the Moolasthanam of the temple is the Ananthapuram Temple in Kasargod, architecturally to some extent, the temple is a replica of the Adikesava Perumal temple located in Kanyakumari District.¹ It is the richest Hindu temple in the world. In terms of assets gold and precious stones, it is by far the wealthiest institution and place of worship of any kind, in the recorded history of the world.

The principal deity Vishnu is enshrined in the "Anantha Shayanam" posture, the eternal yogic sleep on the serpent Adisheshan. Sree Padmanabhaswami is the tutelary deity of the royal family of Travancore. The titular Maharaja of Travancore Moolam Thirunal Rama Varma is the trustee of the temple as Sree Padmanabhadasa, the slave of Lord Padmanaba. In line with the Temple Entry Proclamation, only those who profess the Hindu faith are permitted entry to the temple and devotees have to strictly follow the dress code.

Custom, Do and Don'ts

Important Note for Temple Visit

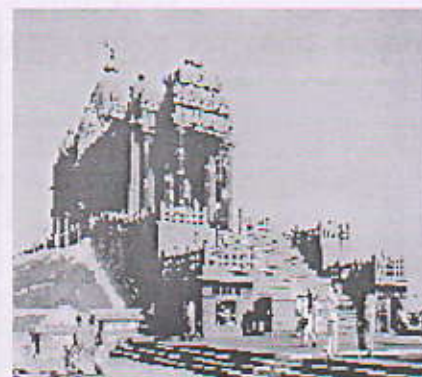
- Entry is restricted to those who profess the Hindu religion.
- There is a special dress code. The dress code for men is Dhoti with or without Angavastra. The dress codes for women are Sarees, Dhoties or Pavadas with blouse or other coverings as appropriate to their age. Salwar sets and other modern dresses are not allowed. Young girls below 12 years may wear gowns. No other types of dress should not be worn or taken inside the temple.
- The men should fasten their Angavastrams around their waist.
- Follow the procedures and timings of the Temple and wait till your turn comes for darshan.
- Worshipers should not sit or prostrate or place any articles on the Ottakkal Mandapam.

- ■ Umbrellas, slippers, cameras, mobile phones, and any other type of electronic equipment and weapons are not permitted inside the Temple.
- ■ Photography is strictly prohibited in the Temple premises.
- ■ Respect the customs and usages of the Temple.
- ■ Bathe and wear clean clothes before entering the Temple.
- ■ Do not smoke or spit inside the Temple.
- ■ Do not use or carry pan masala and such other things inside the Temple.
- ■ Do not throw away the prasadam and theertham received from the Temple. Handle them with respect.
- ■ Do not enter the Temple or Temple premises after consuming liquor and non-vegetarian food.
- ■ Do not commit any activities of violence or quarrel inside the Temple.
- ■ Carrying much jewellery and money will be at the risk of the bearer.

DAY – 03 10TH APRIL 2016
KOVALAM– KANYAKUMARI – KOVALAM.

6.30 to 7.30 am	Bed Tea/Coffee in Room – Tea Maker
7.30 to 8.30 am	Break Fast @ Restaurant
8.45am	Proceed for Kanyakumari in 2*2 AC Coach
11.00 am	Wel Come to Kanyakumari
11.15 am	Visit to Vivekanand Rock by Ferry
1.00 pm	Wel Come to Hotel For Lunch
2.00 to 4.00 pm	Visit to Anna Temple & Market Visit for Shopping
4.30 to 5.00 pm	Tea – Coffee
5.00 to 7.00 pm	Return to Hotel – Kovalam
7.00 to 8.30 pm	Free Hours – Leisure Time
8.30 to 11.00 pm	Candle Light Gala Dinner @ Beachside.
	OVER NIGHT STAY AT HOTEL

Kanyakumari is a coastal town in the state of Tamil Nadu on India's southern tip. Jutting into the Laccadive Sea, the town was known as Cape Comorin during British rule and is popular for watching sunrise and sunset over the ocean.

Main Attractions:

Vivekananda Rock Memorial is a popular tourist monument in Vavathurai, Kanyakumari, India. The memorial stands on one of two rocks located about 500 meters east off mainland of Vavathurai, India's southernmost tip.

The Tiruvalluvar Statue is a 133 feet (40.6 m) tall stone sculpture of the Tamil poet and philosopher Tiruvalluvar, author of the Tirukkural. It is located atop a small island near the town of Kanyakumari on the southernmost Coromandel Coast, where two seas and an ocean meet; the Bay of Bengal, the Arabian Sea, and the Indian Ocean.

Devi Kanya Kumari, is Shree Bhagavathy in the form of an adolescent girl child. Devi is also known as Shree Baala Bhadra or Shree Baala. She is popularly known as "Bhagavathy" (Durga or Parvati) "Devi". The Bhagavathy Temple is located in Cape Kanya Kumari in Tamil Nadu; the southern tip of main land India, there by located on the confluence of the Bay of Bengal, the Arabian Sea, and the Indian Ocean.

DAY – 04 – 11TH APRIL:

KOVALAM – TRIVANDRUM (TOUR ENDS)

6.30 to 7.30 am	Bed Tea/Coffee in Room – Tea Maker
7.30 to 9.30 am	Break Fast @ Restaurant
09.30 am	Hotel Visit & Usage of Amenities
12.30 pm	Lunch @ Restaurant
	CONFERENCE AT SEA VIEW HALL
3.00 pm	Wel - Come Speech by Shri. Aashutosh Thakkar Hon'ble Treasurer – IT Bar Asso.,
3.15 to 3.30 pm	<u>Floral Wel - Come</u> (a) Shri. Shailesh C. Desai – Shri Sudhir Gupta (b) Shri. Shaival U. Bhatt - Shri. Darshan S. Jani (Past President – IT Bar Asso)
3.30 to 4.15 pm	3 rd & 4 th Technical Session
4.15 to 4.30 pm	Valedictory Session :
4.45 to 5.00 pm	Vote of Thanks by Bhupendra K. Thakkar Hon'ble Jt. Secretary – ITBA
5.30	Proceed for Air Port – TRV in 2*2 AC Coach
6.30	Proceed for Boarding Pass at Air India Counter

7.25 pm	Final Proceeding for Boarding Pass
8.25 pm	Departure Air India Flight No : AI -668 From TRV to BOM
10.50 pm	Arrival to Mumbai Domestic Air Port
12.00 am	Proceed for Boarding Pass to Air India Counter
12.45 am	Proceed for AI – 668 Gate No :
1.20 am	Departure Air India Flight No : AI -144 From BOM – AHD
2.25 am	Arrival at Home Town Ahmedabad at Domestic Airport – Sardar Vallabhbhai Patel

Important Note:

CHART OF MOBILE CONNECTIVITY:-

TEMPERATURE CHART:-

Day	Sunrise Times	Sunset Times
Friday 8 th April 2016	06.16 am	6.32 pm
Saturday 9 th April 2016	06.16 am	6.32 pm
Sunday 10 th April 2016	06.15 am	6.32 pm
Monday 11 th April 2016	06.15 am	6.32 pm

<u>08/04/16</u>	<u>09/04/16</u>	<u>10/04/16</u>	<u>11/04/16</u>	<u>12/04/16</u>
Partly sunny, a few showers 34° Lo 28° Hist. Avg. 33° Lo 26°	An a.m. shower, then showers 33° Lo 28° Hist. Avg. 33° Lo 26°	An afternoon t-storm or two 33° Lo 28° Hist. Avg. 33° Lo 26°	Partly sunny with a shower 34° Lo 29° Hist. Avg. 33° Lo 26°	Partly sunny, showers around 34° Lo 26° Hist. Avg. 33° Lo 26°

HEALTH CLUB:-

UDS has a state-of-the-art health club with most modern equipment and trained staff. It offers a convenient setting to tone up the body and plunge into an exhilarating work out session.

Dress Code : - Track Suite / Sports Wear with Sports Shoes
 Timing : - 06.00 am to 07.00 pm

SWAMMING FACILITY:-

UDS is the only hotel in Kerala with three magnificent swimming pools facing the sea. A splash in pool will certainly drain away ones stress along with cool drink at the pool side Sunken Bar. One can also lie back on one of our hammocks and close eyes to enjoy the sea breeze.

Dress Code : - Swimming Suite
 Timing : - 06.00 am to 07.00 pm



Ayurvedic Individual Treatments at Ayur Ashram
(14.77 % taxes extra)

SL. NO.	TREATMENTS	RATES IN INR	DURATION
1	Shirodhara	Rs.1725/-	40 mnts
2	Ksheeradhara	Rs.1500/-	40 mnts
3	Takradhara	Rs.1400/-	40 mnts
4	Sarvanga Kashayadhara	Rs.2000/-	60 mnts
5	Abhyangam	Rs.800/-	30 mnts
6	Shiroabhyangam	Rs.650/-	30 mnts
7	Ekangahbyangam	Rs.650/-	30 mnts
8	General Massage	Rs.1400/-	60 mnts
9	Rejuvenation Massage	Rs.1500/-	60 mnts
10	Revitalization Massage	Rs.1750/-	90 mnts
11	Marma Massage	Rs.1500/-	60 mnts
12	Revitalization Therapy	Rs.3000/-	2 hrs
13	General Therapy	Rs.2500/-	90 mnts
14	Rejuvenation Therapy	Rs.2700/-	90 mnts
15	Herbal Cream Massage	Rs.1600/-	60 mnts
16	Udhuvarthanam	Rs.1400/-	45 mnts
17	Elakizhi	Rs.1400/-	45 mnts
18	Podi Kizhi	Rs.1400/-	45 mnts
19	Mamsa Kizhi	Rs.2000/-	60 mnts
21	Njavara Kizhi	Rs.1750/-	60 mnts
22	Narangha Kizhi	Rs.1500/-	45 mnts
23	Pizhichil with oil	Rs.3000/-	45 mnts

24	Takra Pizhichil	Rs.1800/-	45 mnts
25	Ksheera Pizhichil	Rs.1800/-	45 mnts
26	Dhanyamala Dhara	Rs.1800/-	45 mnts
27	Nasyam	Rs.500/-	30 mnts
28	Pichu	Rs.500/-	30 mnts
29	Snehapanam	Rs.300/-	
30	Shirovasthi	Rs.1725/-	45 mnts
31	Thala Pothichil	Rs.1700/-	45 mnts
32	Mukha Lepam	Rs.750/-	45 mnts
33	Shareera Lepam	Rs.1500/-	45 mnts
34	Herbal Steam bath	Rs.500/-	10-20 mnts
35	Ksheera Dhoomam	Rs.1200/-	45 mnts
36	Part Khseera Dhoomam	Rs.500/-	30 mnts
37	Oushadha Dhoomam	Rs.1200/-	45 mnts
38	Karna Dhoomam	Rs.450/-	30 mnts
39	Neetra Tharpanam	Rs.1000/-	30 mnts
40	Akshi Prakshalanam	Rs.450/-	30 mnts
41	Sneha Vasthy	Rs.550/-	
42	Kashaya Vasthy	Rs.1500/-	
43	Yoni Prakshalanam	Rs.1000/-	30 mnts
44	Kati Vasthy	Rs.1200/-	45 mnts
45	Janu Vasthy	Rs.1000/-	45 mnts
46	Uro Vasthy	Rs.1600/-	45 mnts

- ❖ Members are requested to take benefit of Spa, Ayurveda with in the premises of the Hotel.
- ❖ The Special Flat 15% discount will be given to the Participant of 57th RRC of the Income Tax Bar Association.
- ❖ Prior Booking is required.

SHOPPING ATTRACTION:

Shopping in Trivandrum

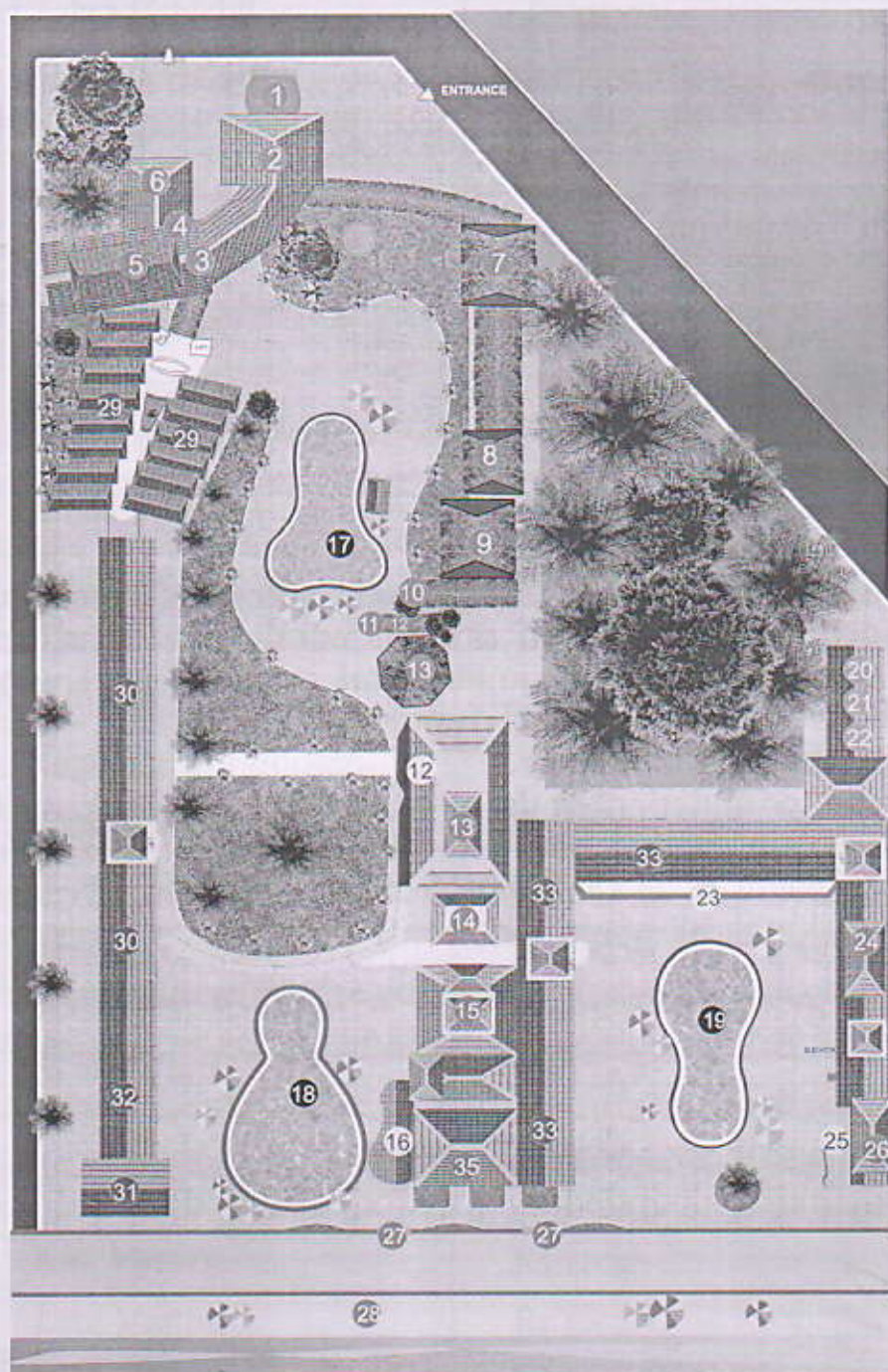


Shopping in Trivandrum

Trivandrum is a great place to pick up some souvenirs to take back home. Excellent local handicrafts such as shell work, terra cotta, copper and brassware, wood carvings and bamboo work are popular items and can be found at shops all over the city. Trivandrum's local craftsmen are amazing sculptors, creating a wonderful range of idols and other figurines. Locally produced coir products made from woven coconut husk, such as floor mats and rugs, are another hot item. The coconut shells are then carved into elaborate items of all kinds, but probably the most intriguing souvenir are miniature Kathakali masks that come in all shapes, sizes and colours.



The city's main shopping districts can be found along MG road, Power House road, Chalai, and Saphalya. There are also shopping malls at Attakul Shopping Complex in the East Fort area and Narmada Shopping Complex in Kaudiar, although the best craft shops are scattered along MG road.



1. Porch
2. Lobby
3. Grasshopper Restaurant
4. Horse Shoe Bar
5. Vizinjam Hall
6. Light House Hall
7. Curious Shop
8. Beauty Parlor
9. Dental Spa
10. Ocean Spa
11. Change room (Gents/Ladies)
12. Courtyard Restaurant
13. Board Room
14. Ayurveda
15. Health Club
16. Lounge Coffee Shop
17. Swimming Pool 1
18. Swimming Pool 2
19. Swimming Pool 3
20. Activity Zone

21. Beach View Hall 1
22. Beach View Hall 2
23. Swasta Pure Veg. Restaurant
24. Sea View Hall
25. Aqua Marine Restaurant
26. Pent House
27. Beach Gate
28. Waves
29. Aljun Block
30. G. Floor Front: 804 - 810
31. Back: 811 - 819
32. 1st Floor Front: 820 - 826
33. Back: 827 - 834
34. 2nd Floor Front: 835 - 841
35. Back: 842 - 849
36. 3rd Floor Front: 850 - 856
37. Back: 857 - 864
38. 3rd Floor Front: 865 - 871
39. Back: 872 - 879

30. Premium Block
31. G. Floor: 501-511
32. 1st Floor: 601-611
33. 2nd Floor: 701 - 711
34. Presidential Suite 802, 803, 810, 830
35. Maharajas Suite 880
36. Ayur Ashram
37. G. Floor: 105 - 115 & 411
38. 1st Floor: 207 - 218 & 412
39. 2nd Floor: 219 - 228 & 414
40. Deluxe Suite
41. G. Floor: 301 - 304
42. 1st Floor: 305 - 308
43. 2nd Floor: 309 - 312

1st Technical Session

SEA VIEW HALL

Date : 09/04/2016

Time : 10.00 am to 1.30 pm

BIO - DATA

FULL NAME :- UPENDRA JASWANTLAL BHATT

QUALIFICATION :- B.Com. LL.B. Advocate
Member Of Bar Council of Gujarat Since 1975

ACTIVITIES :-

- 1 Practicing In Taxation Field Since 1969.
- 2 Writing Articles on Tax Issues In journals like MAGAZINE OF GUJARAT CHAMBER OF COMMERCE AND INDUSTRIES, TAX REPORTER TAXLAWS AND VIES AND ALL INDIA FEDERATION OF TAX PRACTITIONERS AND BHAVNAGAR CHAMBER OF COMMERCE.
- 3 Chairman, Panel Speaker in Many Symposiums, Trustee in many Brain Trust, Work Shops and Conferences, Conducted on I.T. Quiz etc.
- 4 Delivered Lecturers for the Examination of Income Tax Inspector and Income Tax Officers.
- 5 Also Giving Lectures to the Departmental Officials after Retirement regarding their Tax planning By Gift, Will And Investment.
- 6 Giving Views on Budget Proposals.
- 7 Former Lecturer In Vivekanand Law College and Sir L.A. Shah Law College, Teaching Taxation in Second LL.B. & LL.M. Classes and also teaching other subjects like Partnership Act, Company Law, Hindu Law Etc.
- 8 WRITTEN BOOKS ON
 - A. ASSESSMENT OF INCOME FROM "CAPITAL GAINS".
 - B. TAX PLANNING FOR SALARIED PERSONS IN GUJARATI LANGUAGE.
 - C. NEW PROCEDURE FOR SEARCH & SEIZURE CASES & BLOCK ASSESSMENT.
 - D. NEW ACCOUNTING STANDARDS AND ACCEPTANCE OF DEPOSIT.
 - E. INVESTMENT IN SHARES & CAPITAL GAINS
- 9 ASSOCIATION ACTIVITIES
 - A. PRESIDENT OF INCOME TAX BAR ASSOCIATION IN THE YEAR 1993-1994.
 - B. PRESIDENT OF ALL GUJARAT FEDERATION OF TAX CONSULTANTS YEAR 2000-2001.
 - C. SECRETARY OF INCOME TAX APPELLATE TRIBUNAL BAR ASSOCIATION IN 1998-1999.
 - D. CONVENOR OF TAXATION ADVISORY COMMITTEE OF GUJARAT CHAMBER OF COMMERCE & INDUSTRY IN 1999-2000 TO 2004-2005.
 - E. CO-OPTED MEMBER OF THE EXECUTIVE COMMITTEE OF GUJARAT CHAMBER OF COMMERCE AND INDUSTRIES.
- .10 SOCIAL ACTIVITIES
INVITEE MEMBER OF :
 - A. GUJARAT LOK KALYAN FOUNDATION
 - B. DARDI SAHAYAK TRUST
 - C. COMMITTEE MEMBER OF APANG MANAV MANDAL
- .11 HOBBIES
 - A. To travelling mostly outside India
 - B. Sports
 - C. Music

STAY OF DISPUTED TAX

Legal position with regard to grant of stay of disputed demand and recent instruction issued by
CBDT dated 29/02/2016

Paper for I T Bar for Kerala Seminar held on 08-09-10 April 2016

Sr. No.	Topic	Pages
	Part – A	
1	Preamble	1 & 2
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STAY OF DISPUTED TAX

Legal position with regard to grant of stay of disputed demand and recent instruction issued by CBDT dated 29/02/2016

Paper for I T Bar for Kerala Seminar held on 08-09-10 April 2016

PART - A

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1. Preamble

It is our practical experience in our day to day practice that only 1% of cases are selected for scrutiny and high pitched assessments are made in many cases and consequently, huge demands are raised against the assessee. It is also experienced that on the basis of such high pitched assessments, the Assessing officers/Additional CITs/ CITs take coercive action for collection of such arbitrary demands.

When stay application is filed by the assessee, such stay application is rejected without passing a speaking order. Stay is granted if 50% of such disputed demand is paid and for the remaining 50% demand, installments are granted. Generally 6 to 9 Monthly installments are granted for balance outstanding demand. Thus before the appeal is heard by CIT(A), attempt is made to recover the entire disputed demand.

Due to policy of CBDT of fixing hearing of appeals after one year, appeals are not heard for 1 year and thus at one end there is pressure of recovery from the I T Authorities and on the other hand, the appeals are not heard by CIT(A). This puts the assessee into helpless position.

CIT(A) are working under CBDT so they cannot function independently. CBDT fixes certain quota for disposal of cases and also issued guidelines for taking certain high demand cases on priority after obtaining permission of Principal CCIT / CCIT. Thus on account of this approach of CBDT, justice is delayed.

In this paper, I have tried to deal with recovery proceedings in question – answer form as well as CBDT recent instruction dated 29/02/2016. This paper is divided in two parts. Part 'A' deals with legal position which covers judgments, Instructions etc. and Part 'B' deals with CBDT instruction dated 29/02/16.

Hope that this paper will be useful to my professional friends.

Q.1 Under which section of the Income Tax Act, the assessing officer can grant stay of disputed tax ?

A.1 Under section 220(6), assessing officer has power to treat the assessee not in default for not making payment of disputed tax even though the time of payment of tax has expired till the appeal is disposed of. While granting stay, assessing officer can impose such condition/conditions as he may think fit looking to the facts and circumstances of the case.

Q.2 What is the time limit for payment of tax ? Whether this time can be curtailed ?

A.2 Time limit for payment of tax is 30 days as per section 220. This time can be curtailed by the assessing officer if he has reason to believe that it will be detrimental to revenue if the full period of 30 days is allowed. In such cases, assessing officer will take previous approval of JCIT. In those cases tax will be payable as per time prescribed in the notice of demand issued u/s, 156.

i. In the case of **GUJARAT STATE ENERGY GENERATION LTD. vs. ACIT** reported in **358 ITR 254 Gujarat** it was held that, 30 days time for payment of tax cannot be reduced unless there is belief that full period would be detrimental to the interest of revenue.

* Mere discussion in a meeting of several high ranking tax officers checking out a certain action plan for timely recoveries would not satisfy such requirement, which must be observed individually.

ii. In the case of **AMUL RESEARCH & DEVELOPMENT ASSOCIATION vs. ITO** reported in **359 ITR 549 Gujarat** it was held by the Honorable Gujarat High Court that non meeting of the budgetary deficit of the Central Government could not be ground to reduce payment of 30 days considering it to be detrimental to the cause of revenue.

In this case even the permission of JCIT was not obtained. It was held that recovery proceedings were not valid. Recovery proceedings are Garnishee proceedings and in such proceedings, assessee must be given an opportunity of being heard.

It was further held by the court that though appeal was preferred by the assessee, there was no bar to issue of writ.

Q.3 Which are the instructions for grant of stay on which the department is relying and the assessee is relying ?

A.3 The department is always relying on instruction no.1914 contents of which is reproduced here under :

A. Instruction no.1914 dated 02/12/93

This instruction is relied by the I T department. According to the view of department, it is in suppression of all previous instructions.

In this instruction it was directed that in the following cases, the demand should not be recovered when

- i. The demand is yet not due
- ii. The demand is stayed by any Court, Tribunal, Settlement commission
- iii. The demand which is referred to CBDT for write off
- iv. Where the certificates are issued to TRO's in such cases TRO's will recover the demand
- v. Stay application to be disposed of within 2 weeks and the assesses to be informed
- vi. When the stay application is filed to Deputy CIT/CIT/Chief Commissioner, they should dispose of such stay application within maximum 2 weeks under intimation to the assessee and assessing officer.
- vii. Generally the stay applications are to be disposed of by assessing officer. Only in exceptional cases, higher authorities should interfere when they feel that the assessment order is not properly framed and the assessee will face problems on account of such orders.

* In practice, this is not followed

B. Specific directions given in this instruction are as under

- i. If there is no reasonable cause to grant stay to the assessee, simply because an appeal is filed, the stay should not be granted.
- ii. If the issue on which addition is made by the assessing officer is decided in favour of the assessee by appellate authority, in such case, stay should be granted.
- iii. The issue involved in the case of the assessee, if there are different judgments of different courts but not from the jurisdictional High court under which the assessee falls and on the basis of some judgment the addition is made in the case of the assessee, the stay should be granted to the assessee.
- iv. If the issue involved in the case of the assessee is decided in favour of the assessee by jurisdictional High court but the same is not accepted by the IT department, in such case stay should be granted.
- v. The assessing officer can impose certain conditions at the time of granting stay like taking security from the assessee, giving installments, taking assurance from the assessee that he will co-operate in early disposal of appeal, to adjust future refunds against outstanding demand etc.
- vi. Maximum 18 installments to be granted to the assessee for recovery of disputed tax.
- vii. Stay application should be decided by passing a speaking order.
- viii. When the stay is granted by ITAT, such matters should be heard out of turn and for that, departmental representative to make necessary efforts.
- ix. On receipt of appeal order, appeal effect to be given within 2 weeks

While the assessee is relying on Instruction no.96 contents of which is reproduced here under

A. Instruction no.96 / F.No.116/69-ITCC dated 21/08/69

This instruction is very helpful to assesses. It has been considered in number of cases by various courts.

Instruction : One of the point that came up for consideration at the 8th meeting of the Informal Consultative Committee was, that Income Tax assessments were arbitrarily pitched at high figures and that the collection of disputed demands as a result thereof was also not stayed inspite of the specific provision in the matter in section 220 (6) of the Income Tax Act, 1961.

The then Deputy Prime Minister had observed as under :

"...Where the income determined on assessment was substantially higher than the returned income, say, twice the latter amount or more, the collection of the tax in dispute should be held in abeyance till the decision on the appeals, provided there were no lapse on the part of the assessee."

The Board desires that the above observations may be brought to the notice of all the Income Tax Officers working under you and the powers of stay of recovery in such cases up to the stage of first appeal may be exercised by the Inspecting Assistant Commissioner / Commissioner of Income Tax.

B. Circulars issued by CBDT to grant stay

- i. **Circular no.530 dated 06/03/89 reported in 176 ITR 240 Statute**

Assessing officers were directed by this circular that when the appeal is filed by the assessee against the assessment order, stay of disputed tax should be granted by the assessing officer looking to the facts of the case and by imposing certain conditions till the appeal is decided. It was directed in this circular to grant stay in the following circumstances.

- The issue on which addition is made, where there are different views by different high courts
or
- The issue is decided in favour of the assessee by jurisdictional high court but the same is not accepted by the department
or
- The issue on which addition is made, the same is decided in favour of the assessee by appellate authority or court

ii. Circular no.589 dated 16/01/91 reported in 187 ITR 79 Statute

Assessee financially sound not relevant. Stay to be granted

In this circular it was directed to consider the above circular i.e. Circular no.530, as well as it was further directed to grant stay to the assessee by passing a speaking order. At the time of granting stay, whether the assessee is capable enough to make the payment of disputed tax is not to be taken into consideration.

Instruction no. 96 is clear in such cases, where the assessed income is more than double of the returned income, in such cases the assessee should not be treated as assessee in default for not making payment of such disputed tax.

iii. Instruction no.96 was again repeated by new Instruction no.977 dated 13/07/96 (XXII/1/54)

As per this instruction, it was directed not to treat the assessee in default till the first appeal was decided if there were no lapses on the part of the assessee in the appellate proceedings.

Q.4 Which instruction out of the above two is still holding the field i.e. Instruction no.96 and Instruction no.1914 ?

A.4 Instruction no.96 is still holding the field because it was issued on the basis of assurance given by the Minister from the floor of the Parliament and on account of this assurance, this instruction was issued.

CBDT chairman is not above the parliament so he cannot cancel the assurance given by the then Minister from the floor of the Parliament. As per view of **Shri T. N. Pandey (Ex. Chairman CBDT 297 ITR page1 Journal on page 6)** in the article of stay of demand of disputed assessments it has been mentioned that,

"If instruction no.96 is not followed, the I T authorities are committing contempt of parliament. The Central Board of Direct Taxes cannot unilaterally issue circulars which are contrary to instruction no.96 dated 21/08/1969 issued with the approval of the informal consultative committee of parliament and the then deputy prime minister / finance minister."

Q.5 Whether instruction no.96 has been tested by judicial authorities?

A.5 Yes in the following decisions, instruction no.96 was considered and I.T. Authorities were directed to consider instruction no.96 and to take appropriate action. Short summary of judgments is given here under :

- (1) **182 ITR 413 Gujarat**
VIKRAMBHAI PUNJABHAI PALKHIWALA vs. S.M. AJBANI, RECOVERY OFFICER & ORS.
 In this case instruction no.96 with regard to stay in cases of harsh assessments was considered by the Honorable Gujarat High Court on page 420 and 421.
- (2) **217 ITR 641 Allahabad**
MRS. R. MANI GOYAL vs. COMMISSIONER OF INCOME TAX & ANR.
 In this case returned income was Rs.11710/-. The income was enhanced and the tax payable was worked out at Rs.3304450/- i.e. more than several times of the income returned.
 It was held by the Honorable Court that recovery of such huge demand is opposed to principles of good conscious and fair play.
- (3) **223 ITR 192 Rajasthan**
Maharana Shri Bhagwat Singhji of Mewar v. Income-tax Appellate Tribunal
 It was directed not to force the assessee to deposit 25% of the disputed tax.
- (4) **267 ITR 60 MP**
Jain Cycle Spares and Co. v. Commissioner of Income-tax
 In this case, directions were given to the appellate authorities to decide appeal expeditiously.
- (5) **303 ITR 115 Madras**
M. G. M. Transports (Madras) P. Ltd. v. Income-tax Officer
 In this case, return showing **loss** was filed. Harsh assessment was made and demand of Rs.14025762/- was raised.

 It was held by the court that, instruction no.96 was squarely applicable. Without giving any factual finding and simply by writing, "No valid reason has been stated for stay of demand" was not sufficient. The petitioner was entitled to stay for collection of tax till order was passed in appeal subject to making certain payments.
- (6) **307 ITR 103 Delhi**
Valvoline Cummins Limited V/S. SCIT and Others
 In this case returned income was Rs.7.5 crore and which was assessed at Rs.58.68 crore.
 It was held by the court that, the assessee would in the normal course be entitled to an absolute stay of the demand on the basis of instruction no.96 dated 21/08/79 issued by board. The petitioner was directed to pay 15% of demand in installments after deducting 1 crore paid.
- (7) **323 ITR 305 Delhi**
SOUL V/s. DCIT
 In this case returned income was Rs.10.16 Lac which was assessed at Rs.7.59 crore and demand of Rs.4.31 crore was raised. On account of notice of assessing officer, the banking operations of the assessee came to stand still. Rs.2.24 crore was recovered from the assessee. Further refund of Rs.3.28 Lac was adjusted. An appeal was filed by the assessee. Application of stay was also

pending before the commissioner. It was directed by the court to decide stay application.

- (8) **324 ITR 247 Delhi**
Taneja Developers And Infrastructure Ltd. V/s. ACIT
And Others Date of Order : 24/02/09

In this judgment instruction no.96 was considered.

In this case returned income was Rs.4641070/- which was assessed at Rs.1,67,80,23,590/- which was almost 350 times of the returned income.

The commissioner directed to pay 50% of outstanding demand. It was held by the court that when assessed income is substantially higher than returned income, CBDT instruction 1222 was not suppressed by ins.no.1914 of 1993. Demand must be stayed.

This judgment was given after considering assurance given by Deputy Finance Minister on the floor of the parliament and on the basis of which instruction no.96 (it should be 95) was issued on 21/08/1969 and the judgment given in the case of Soul V/s. Deputy CIT (2010) 323 ITR 305 (Delhi) and other judgments were cited during the course of proceedings before Delhi High Court.

- (9) **346 ITR 375 Rajasthan**
246 CTR 113 Rajasthan Date of order 15/12/11
MAHESHWARI AGRO INDUSTRIES vs. UNION OF INDIA & ORS
 Details of this judgment is given in reply to Que.No.7.

Q.6 Which issues are to be taken by the assessee in stay application ?

- A.6 While drafting the stay application, following points are to be incorporated in the stay application.
- Brief history of the assessee regarding nature of activities carried out by the assessee.
 - Assessment history i.e. details called by the assessing officer and its compliance made with necessary evidences to be mentioned.
 - History of previous assessments where the order was passed u/s.143(3) and if addition was made then on what ground.
 - Attitude of the assessee in payment of taxes and finalizing assessment proceedings.
 - If appeal is filed against the assessment to CIT(A), points raised in appeal. It is advisable to attach copy of appeal memo filed before the CIT(A).
 - If the amount is required to be paid, financial difficulty, genuine hardship and irreparable loss going to cause if the amount was recovered immediately.
 - If the assessee has relied on any decision and the decision is identical to the issue involved in the case of the assessee, it should be mentioned that though there is no financial difficulty but there is a strong prima facie case on merits.
 - If the issue involved in the case of the assessee is decided in favor of the assessee by appellate authority in the previous year/years, then instruction no.1914 will be directly applicable in the case of the assessee. This fact should be brought to the notice of the assessing officer.

If the issue is decided in favour of another assessee on same facts, stay should be granted and decision given in the case of **KALAPET PRIMARY**

AGRICULTURAL CO-OP. CREDIT SOCIETY LTD. V/s. ITO reported in 378 ITR 658 Madras should be brought to the notice of the assessing officer.

- i. If the assessed income is substantially higher than the returned income, instruction no.96 relied in case of **Valvoline Cummins Ltd v/s. DCIT reported in 307 ITR 103 Delhi** should be brought to the notice of the assessing officer.
- j. Tax, interest and the figures in the assessment order must be verified and if there is any mistake, it should be brought to the notice of the assessing officer by making application u/s.154 of the Income Tax Act and it may be also brought to the notice of the assessing officer with a request not to initiate recovery proceedings till rectification is carried out.
- k. A request should be made to give personal hearing.

Q.7 Whether stay application can be filed to CIT(A) ?
(Reply of this question is given in detail as it is important and necessary).

- A.7** Yes. It can be filed to CIT(A) also. It was held in the case of **Maheshwari Agro Industries V/s. Union of India & Ors reported in 346 ITR 375 Rajasthan** that the tendency of making high-pitched assessments by the AOs is not unknown and it may result in serious prejudice to the assessee and miscarriage of justice and sometimes may even result into insolvency or closure of the business if such power was to be exercised only in a pro revenue manner. It may be like execution of death sentence, whereas the accused may get even acquittal from higher appellate forums or courts. Therefore such powers under sub-s (6) of s.220 also have to be exercised in accordance with the letter and spirit of instruction no.96, dt. 21st August 1969, which even now holds the field and its spirit survives in all subsequent CBDT circulars and undoubtedly the same is binding on all the assessing authorities created under the Act.

CBDT was urged to issue appropriate guideline for grant of stay in spirit of instruction no.96 dt 21st August 1969 to all the subordinate authorities and to clarify for uniform application all over the country at department level that first appellate authority shall have power to entertain and decide stay application during pendency of appeal before it upon relevant considerations for grant of stay against recovery of disputed demand of tax.

CIT (A) also has inherent and implied powers to grant stay, the assessee-petitioner may also file stay application before CIT(A), who may also consider such stay application on its own merits upon the relevant factors viz. prima facie case, balance of convenience, irreparable injury, nature of demand and hardship likely to be caused to the assessee, liquidity available to the assessee etc. It is directed that all the first appellate authorities in the cases of other appellant assessee within the State of Rajasthan also would entertain stay applications filed before them during the pendency of appeals and would decide the same on their own merits in future also.

As the assessed income in this case was 47 times of the returned income, recovery of entire amount was stayed by the honorable court.

Similar view was expressed in the case of **Gera Realty Estate V/s. CIT And Others reported in 368 ITR 366 Bombay** that CIT(A) has inherent jurisdiction to deal with application for stay. CIT(A) directed to dispose of the stay application expeditiously. In the mean time, the revenue was not to adopt coercive proceedings against the assessee till the disposal of its stay application by CIT(A).

Q.8 When stay application is pending whether coercive measures of recovery should be taken by the assessing officer ?

- A.8 No. First of all the assessing officer has to dispose of stay application and there after a reasonable period should be given to the assessee to contact higher authorities. In such cases decision given in the case of **UTI Mutual Fund v. Income-tax Officer reported in 345 ITR 71 Bombay (A.Y.09-10)** is worth mentioning here.

It was held in this case that this court laid down certain guidelines in the case of **KEC International Ltd. V/s. B.R. Balkrishnan and Others** should be borne in mind by the I T Authorities for effecting recovery of disputed demand. It was directed in that guideline that,

No recovery of tax should be made during the period allowed for filing an appeal against the impugned assessment order or appellate order. No recovery of tax should be made during the pendency of stay petition moved by the assessee and for a reasonable period thereafter, to enable the assessee to move higher forum.

Q.9 What are the parameters for grant of stay?

- A.9 For grant of stay, parameters were laid down by Mumbai High Court in the case of **KEC International Ltd. V/s. B.R. Balkrishnan and Others reported in 251 ITR 158 Mumbai.**

In this case demand of about Rs.13 crores was raised. The assessee filed stay application. The stay application was rejected without giving any reason. The assessing officer issued notice to the assessee's banker for recovery of tax.

Writ was filed to the Mumbai High Court. The Mumbai High Court set aside the order and issued following parameters to be complied with by the authorities while passing orders on stay applications filed pending appeals to the first appellate authority :

- (i) The authority has to at least set out the case of the assessee briefly.
- (ii) If the assessed income is higher than the returned income, the authority has to consider whether the assessee has made out a case for unconditional stay. If not, whether looking to the questions involved in appeal, a part of the amount should be ordered to be deposited, for which reasons should be given by the authority.
- (iii) If the authority wants the assessee to deposit the amount, he can briefly indicate in his order whether the assessee is financially sound and liable to deposit the amount.
- (iv) The authority concerned will also examine whether the time to prefer an appeal has expired. Generally, coercive measures may not be adopted during the period provided by the statute to go in appeal. However, if the authority concern comes to the conclusion that the assessee is likely to defeat the demand, it may have recourse to coercive action for which brief reasons may be indicated in the order.

- 239 ITR 871 Gauhati
- (8) **JAGADISH N. HINDUJA vs. COMMISSIONER OF INCOME TAX & ANR.**
59 DTR 333 Karnataka
- (9) **ACIT vs. GR INDIA INDUSTRIAL PVT. LTD.**
358 ITR 410 Gujarat

Q.13 Whether ITAT has power to grant stay ?

A.13 Yes. ITAT has power to grant stay as held in the case of

- i. **INCOME TAX OFFICER vs. M.K. MOHAMMED KUNHI reported in 71 ITR 815 SC.**

In this case it was held that, ITAT has identical powers of an appellate court under Civil procedure code in dealing with the appeals. It was further held that ITAT has power to grant stay as incidental or ancillary to its appellate jurisdiction. It was further held that power of stay not to be exercised in a routine way. It can be exercised only when a strong prima facie case is made out. Stay shall be granted in deserving and appropriate cases so that the entire purpose of the appeal is not frustrated if recovery proceedings are allowed to be continued.

- ii. In the case of **Bhoja Reddy v. Commissioner of Income-tax reported in 231 ITR 47 Andhra Pradesh**, it was held that the power of Tribunal to grant stay was ancillary to appellate jurisdiction.
- iii. Similar view was expressed by Bombay ITAT in the case of **RPG Enterprises Limited V/S. DCIT reported in 251 ITR 20.**

Q.14 Whether ITAT has power to grant stay u/s.254 beyond 365 days?

A.14 Section 254 of the I T Act deals with orders of Appellate Tribunal. As per section 254(2A) proviso, ITAT may pass an order of stay after considering the merits of the application. This stay will be in operation not exceeding 180 days from the date of such order and within the period of 180 days ITAT shall dispose of the appeal.

If within the time limit of 180 days the appeal could not be disposed of, on an application from the assessee, the time may be extended by ITAT as it deems fit but overall period of stay shall not exceed more than 365 days. The delay in disposing the appeal should not be attributable to the assessee.

As per proviso to this section made applicable from 01-10-08, if such appeal in not disposed of within the period of 180 days or maximum 365 days as the case may be the stay granted shall stand vacated after the expiry of such period even if the delay in disposing the appeal is not attributable to the assessee.

There are different views by different courts on this issue. Decisions given in favour of the assessee and against the assessee are as under :

A. Decisions in favour of assessee

- (1) 240 CTR 265 Bombay
COMMISSIONER OF INCOME TAX vs. RONUK INDUSTRIES LTD.
- (2) 138 TTJ 257 (SB) ITAT Spe. Mumbai
TATA COMMUNICATIONS LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX
- (3) 150 TTJ 661 Delhi

- (4) **Qualcomm Incorporated V/s. Assistant Director of Income Tax**
81 ITR 397 Calcutta
HINDUSTHAN RUBBER WORKS LTD. vs. INCOME TAX OFFICER & ORS.
- (5) **365 ITR 376 Allahabad**
ADOBE SYSTEMS INDIA P.LTD V/S. JOINT CIT

Power to grant stay. Limited to total 365 days from date of first order. Judgment reserved by Tribunal. Stay to be continued till pronouncement of order. Direction to Tribunal to dispose of appeal expeditiously.

B. Decisions against the assessee

- (1) **252 CTR 281 Karnataka**
CIT vs. ECOM GILL COFFEE TRADING PVT. LTD. & OTHERS

In this case it was held that, legislature stipulate time of 365 days in the third proviso to section 254 (2A) within which the stay order granted by Tribunal can operate. The Tribunal has no power to pass order granting stay beyond the period of 365 days.

C. Practice approach of the court

- (1) **362 ITR 215 Delhi**
266 CTR 337
CIT V/s.

1. Maruti Suzuki (India) Ltd.

2. Income Tax Appellate Tribunal & Another

It was held in this case that, power of ITAT to grant stay is limited to 365 days from 1st order of stay. If there is any delay on the part of the Department, the Tribunal can conclude the hearing and decide appeal meanwhile department can make a statement that no coercive steps will be taken for recovery. Assessee can approach High Court for grant of stay.

Q.15 While rejecting stay application, what stand is taken by the department ?

- A.15 While rejecting stay application, the department is relying on decision given in the case of **ASSISTANT COLLECTOR OF CENTRAL EXCISE vs. DUNLOP INDIA LTD. & ORS.** reported in **154 ITR 172 SC.**

It was held in this case that, stay by high court should be granted in exceptional circumstances. While granting stay, it is to be seen that no prejudice is caused to the tax payer in case they ultimately succeed at the conclusion of the proceedings. On the other hand, the court cannot be unmindful of the need to protect the authority levying the tax for, at that stage, the court has to proceed on hypothesis that the challenge may or may not succeed.

In this judgment there was observation that, **"Governments are not run on mere bank guarantees. Some courts act as if furnishing a bank guarantee would meet the end of justice. Liquid cash is necessary for the running of a Government."**

This was simply a passing remark by the court but while rejecting the stay application, the above para is referred by I T Authorities and without passing a speaking order, stays are rejected. This observation is not part of judgment. It is obiter dicta.

Q.16 It has been experience that the department is attaching property belonging to the wife of the assessee as if the property was purchased by the assessee in the name of his wife. Whether the stand of the department is correct ?

A.16 No. Without proving that the cost of acquisition was paid by husband and the property was purchased in the name of wife, property cannot be attached.

i. As held in the case of **TRO v/s. Gangadhar Vishvanath Ranade reported in 234 ITR 188 S.C.**

It was held that, Power of TRO is limited to property in the name of defaulter. Property in name of wife of defaulter was attached by I T Department on the ground that it actually belonged to defaulter assessee. It was held that action of I T Department was not valid as per section 222 of the I T Act.

ii. As held in the case of **Sancheti Leasing Company Ltd. and Another V/s. ITO and Another** reported in **246 ITR 814 Madras** that ITO cannot declare a transfer to be void. Income tax authorities must file a suit to have transaction declared void.

iii. As held in the case of **Jaymac Lasetron P. Ltd. Vs. Commissioner of Income-tax Munir Ahmed Vs. Union of India** reported in **286 ITR 453 Calcutta** that revenue has no power to declare a transfer to be void. Only the competent Civil Court has power to declare a transfer to be void.

iv. As held in the case of **Shamim Bano G. Rathi Vs. Oriental Bank of Commerce Ltd.** reported in **306 ITR 234 Bombay** that there is no adjudicatory machinery to declare transfer fraudulent. Appropriate proceedings to be taken before Civil Court.

v. **Karsanbhai Gandabhai Patel V/s. TRO** reported in **362 ITR 374 Gujarat**
In this case it was held that TRO has no power u/s.281 to declare a transfer to be void. Only civil suit would lie.

vi. It was held in the case of **Bank of India V/s. Union of India and Others** reported in **167 ITR 668 Delhi** that property of wife cannot be attached unless it is proved that the property belonged to the assessee in default and his wife was a benami holder.

Q.17 If there is outstanding tax demand payable to the State as well as to the Income Tax department, who gets priority ?

A.17 This issue was decided in the case of **Dena Bank V/s. Bhikhabhai Prabhudas Parekh And Co. and Others** reported in **247 ITR 165 S.C.**

It was held in this case that Sales Tax law providing for recovery of arrears of sales tax, penalty or other amount in the same manner as arrears of land revenue. Thus the effect was, that State acquires precedence over secured creditors. Thus though the bank has obtained decree and was authorized to sale mortgage property, the arrears due to the state to be paid first and only thereafter the bank could adjust the remaining amount.

Q.18 Whether the Income Tax department gets priority over secured creditors?

A.18 No. It was held in the case of **Syndicate Bank Vs. Official Liquidator, Wester Works Engineers Ltd., Oriental Bank of Commerce Vs. Official Liquidator, Western Works Engineers Ltd.** reported in **242 ITR 281 Bombay** that secured creditors and workers have priority over tax department.

In the case of **ACIT V/S. Official Liquidator of Minal Oil and Industries Ltd. and Others** reported in **290 ITR 643 Gujarat** it was held that, I.T. Dep. cannot claim propriety over such secured creditors.

Similarly in the case of **KARNATAKA STATE INDUSTRIAL INVESTMENT DEVELOPMENT ORPORATION LTD. vs. CIT** reported in **259 CTR 485 Karnataka** it was held that, if the property is mortgaged, TRO cannot attach this property.

Similarly in the case of **AXIS BANK LTD. vs. COMMISSIONER OF INCOME TAX & ANR** reported in **259 CTR 492 P&H** it was held that secured creditor has preference over the dues of the Income Tax Department in respect of the secured assets.

Q.19 If the property is purchased in auction from the assessee who is a defaulter, what are the rights of bona fide purchaser ?

A.19 Right of bona fide purchaser is protected as held in the case of **Janatha Textiles Vs Tax Recovery Officer** reported in **301 ITR 337 S.C.**

It was held in this case that, if there is auction of property of defaulter assessee, right of independent bonafide purchase to be protected by court.

Q.20 While rejecting stay application, it is noticed that the authority passing order rejects stay application without passing a speaking order, without giving opportunity of being heard, without taking judicious view and directing to pay 50% of disputed tax. In such cases which authorities should be brought to the notice of assessing officer?

A.20 In the circumstances mentioned above, the following decisions should be brought to the notice of assessing officer looking to the facts of case.

(1) 43 ITR 562 Assam

HARDEODAS JAGANNATH vs. INCOME TAX OFFICER

Opportunity of hearing to be given to the assessee.

(2) 139 ITR 900 MP

SETH GOPALDAS PALIWAL vs. WEALTH TAX OFFICER & ANR.

Stay petition dismissed without giving reasons and hearing. A O directed to give hearing.

(3) 175 ITR 428 Madras

Sri Balaji Trading Co. v. CTO (Deputy)

M.C. and Co. v. Appellate Assistant Commissioner

Thangaraj (S.M.) v. State of Tamil Nadu

Saravana Oil Mills v. Appellate Assistant Commissioner

New Steel Industries v. Appellate Assistant Commissioner

Rajagopal (G.) v. State of Tamil Nadu

Gurunathan (T.) v. Collector of Customs (Addl)

Discretion to grant stay must be exercised judiciously by passing a speaking order.

(4) 183 ITR 532 Calcutta

DUNLOP INDIA LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ORS.

Discretion to grant stay should be exercised in reasonable manner and reasons must be given.

(5) 204 ITR 480 P&H**Aggarwal Rice and General Mills v. Commissioner of Income-tax**

No opportunity of being heard given and no speaking order passed. A.O. Directed to give opportunity of being heard.

(6) 213 ITR 299 Allahabad**Shiv Shakti Rubber and Chemicals Works v. Income-tax Appellate Tribunal**

Assessing Officer directed to act in judicial manner and to give justice to the litigant.

(7) 230 ITR 705 Delhi**Teletube Electronics Ltd. Vs. Commissioner of Income-tax**

Assessing Officer directed to give opportunity to the assessee and pass a speaking order.

(8) 266 ITR 62 Allahabad**Shivangi Steels (P.) Ltd. V/S. ACIT and Another**

Assessing Officer directed to decide stay application in accordance with law and discretion given to I T Authority to be exercised judiciously.

(9) 301 ITR 233 Karnataka**M. Shivanna and another V/S. DCIT**

Rejection of stay application without giving reasons was not valid.

(10) 351 ITR 160 Bombay**Deloitte Consulting India Pvt Ltd V/s. ACIT**

By this court : It was mentioned by the court in this judgment that the stay application cannot be decided in a casual manner. By writing, "Looking to the facts and circumstances of the case, no case has been made out. This is no proper exercise of discretion given to the I T Authority. The assessing officers are required to act fairly while deciding the stay application u/s/220(6).

(11) 237 CTR 153 Mumbai**PARAMOUNT HEALTH SERVICES (TPA) (P) LTD. & ORS. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ORS.**

It was directed by Bombay High Court that the stay application was rejected without considering the parameters prescribed by this court in the case of **KEC International Ltd. V/s. B.R. Balkrishnan and Others reported in 251 ITR 158 Mumbai**. The court directed to dispose of stay application and till it is disposed of, no recovery proceedings should be carried out.

(12) 249 CTR 190 Bombay**UTI Mutual Fund vs. INCOME TAX OFFICER and Ors.**

In this judgment it was held that, revenue made unfortunate and hasty attempt to make a recovery of demand against the petitioner without enabling it to take reasonable recourse to the remedies available in law. Stay

application rejected without hearing the assessee, considering the submission. Revenue directed not to take any coercive steps, pending disposal of appeal and for six weeks thereafter.

Q.21 Whether courts have taken strict view for taking harsh action of recovery proceedings i.e. without affording opportunity, attachment of bank account and recovery from bank account ? (Reply of this question is given in detail as it is important and necessary.)

A.21 Yes. The courts have taken strict view which could be noticed from the wordings of judgment given

i. In the case of **Mahindra and Mahindra Ltd. v. Assessing Officer reported in 295 ITR 42 Bombay**. Certain portion of the judgment is reproduced.

In this case without affording fair opportunity to the assessee to reply show cause notice, the bank accounts were frozen and money was also recovered on the same day. It was held by the court that the action of recovery was void ab initio.

The parameters laid down in the case of KEC International Ltd. where also not followed which amounts to contempt of courts. It is the past experience that the consistent approach of the revenue not to follow the law laid down by this court. Action of respondent no.1&2 shocks our judicial conscience. Rule of law has been given a total go-bye and willfully ignored. The income tax authority have acted in a high handed manner.

In this case, before appeal period was over, the attachment was made and the amount was recovered. It was the reply on behalf of the revenue that the department was not willing to bring back the money which was forcibly recovered ignoring the decision of Bombay High Court.

The court directed the department to return Rs.294256264/- and deposit with registrar general of the court.

Stricture against the Joint Commissioner of Income Tax Act is worth reading.

"The joint commissioner Mr J R Dahad, respondent no.2 who was present in the court and it was made clear that this order has been pronounced loudly in the open court and learned council for the respondent has fully understood the above order and joint commissioner Mr J R Dahad has also fully understood the above order. Notice of contempt was issued for prima facie knowingly and willfully disobeying the two order of Bombay High Court."

ii. Another judgment was given in the case of **Director of Income Tax (Exemption) V/s. ITAT reported in 265 CTR 337 Bombay**.

This is also a land mark decision in which it was held that, under haste of A O in recovering a sum of Rs.159.84 Crore was not only contrary to the binding decision of the court but also shocking to the judicial conscience. The entire action appears to have been directed to make the Tribunal and assessee helpless so that no relief can be granted in favour of assessee. There is no reason to interfere with the order passed by ITAT directed the revenue to refund Rs.159.84 Crores to the assessee.

Q.22 Can the assessing officer without disposing stay application can proceeds for recovery of outstanding demand ?

A.22 No. The assessing officer is required to decide the stay application by passing a speaking order.

In the following cases directions were issued by Courts not to make recovery till stay application was decided.

(1) 256 ITR 698 Gauhati

Bongaigaon Refinery and Petro Chemicals Ltd. V/S. CIT and Others

Sometimes even though stay application is filed to appellate authorities, the I T authorities insist for payment of disputed tax. For such cases, this is the excellent judgment. It was held by the court that demand must be stayed until application is considered and order passed by Tribunal.

(2) 285 ITR 419 Bombay

Coca Cola India P. Ltd. v. Additional Commissioner of Income-tax

Obiter Dicta : Attaching the bank account of the petitioner even before communicating the order passed on the stay application is totally high handed.

(3) 351 ITR 302 Bombay

261 CTR 410

Society of the Franciscan (Hospitaller) Sisters V/s. DCIT

It was held by the court that, pending appeal and stay application of assessee, recovery of demand by revenue without giving opportunity of hearing to assessee is not justified.

Q.23 Whether director can be held liable for the disputed tax in the case of the company ?

A.23 Yes. As per section 179 which deals with liability of a director in a private company. As per this section, when tax from a Private Company cannot be recovered, then every person who was a Director of the private company shall be jointly and severally liable for the payment of such tax, unless he proves that the non recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

With effect from 01-06-13 amendment has been made in this section. Explanation has been inserted which provides that, for the purpose of this section, the expression "tax due" includes penalty, interest or any other sum payable under the Act.

Thus the effect of judgments given by the courts that tax does not include interest or penalty has been nullified by this amendment.

Q.24 Whether the tax can be directly recovered from the Director instead of from the company ?

A.24 No. Liability of director arises only when tax cannot be recovered from Company.

a. 268 ITR 302 Calcutta

Dipak Dutta and another V/S. Union of India and Others

It was held in this case that, the Director is liable for recovery of the company only if there is a finding that tax for relevant period cannot be recovered from company.

b. 282 ITR 120 Gujarat

Indubhai T. Vasa (HUF) V/S. ITO

It was held in this case that, revenue must establish that recovery cannot be made from company, then only the Directory will be liable.

c. 308 ITR 113 Gujarat

Amit Suresh Bhatnagar V/S. ITO

It was held in this case that, when no effective steps are taken to recover the tax from company, revenue cannot initiate action against Directors.

d. 353 ITR 585 Gujarat

Pravinbhai M Kheni V/s. ACIT

It was held in this case that, Section 179 (1) is not applicable to Public Company.

e. 362 ITR 115 Gujarat

Jashvantlal Natvarlal Kansara & Others V/s. ITO

In this case, Debt Recovery Tribunal (DRT) directed bank to recover its dues. The remaining amount due to the bank was paid by the Directors from their own resources and also forgo their loans to the company with a request to delete their names from registrar of companies. In such circumstances recovery could not be made from the Directors for the dues of the company.

f. 264 CTR 520 Allahabad

Pratibha Garg V/s. CIT

It was held in this case that, there was no evidence of gross neglect, misfeasance or breach of duty on the part of the assessee, Section 179 could not be invoked against the assessee.

Other issues with regard to recovery proceedings

Q.25 Whether salary of a debtor of a tax defaulter can be attached u/s.226(3)?

A.25 No. Only salary of tax defaulter can be attached u/s.226(3) and not of the debtor of tax defaulter assessee. As held in the case of **Tejal R. Amin (Smt.) Vs. Assistant CIT** reported in **208 ITR 103 Gujarat**.

Q.26 Whether tax can be recovered in protective assessment ?

A.26 No. In protective assessment recovery of tax cannot be made. As held in the case of **Commissioner of Wealth Tax V/S. Begam Brigees Zahoor Qasim and Others** reported in **248 ITR page 482 Delhi**.

Q.27 Where the assessee is a partner in Individual capacity, Whether his share in HUF can be attached for his Individual tax dues ?

A.27 No. As held in the case of **ITO V/s. Tippala China Appa Rao** reported in **331 ITR 248 A.P.** In this case the assessee was a partner in the firm. Demand was raised in the case of the firm. His share in HUF was attached by the assessing

officer. It was held that, HUF properties cannot be attached for recovery of tax due by firm.

Q.28 Whether the transferee has no knowledge about pending Income Tax proceedings in the case of the transferor, and the property is transferred by the transferor, whether this transferee is void as per section 281 ?

A.28 No. As held in the case of **Tax Recovery Officer v. Industrial Finance Corporation of India** reported in **346 ITR 11 Gujarat**.

It was held in this case that transfer u/s.281 is void only if transferee had notice of pendency of income-tax proceedings.

Q.29 When the assessee has succeed in appeal in the previous year and the assessing officer has made addition on the same ground, whether the refund can be adjusted against the demand raised by the assessing officer ?

A.29 No. As held in the case of **Maruti Suzuki India Ltd. V/s. Deputy Commissioner of Income Tax** reported in **246 CTR 176 Delhi** that, if the issue has already been decided in favour of the assessee by the appellate authority, the assessing officer cannot pass an order of adjustment of refund u/s.245.

Q.30 Whether PPF account of the assessee can be attached ?

A.30 No. In the case of **Dineshchandra Bhailalbhai Gandhi V/s. TRO** reported in **362 ITR 380 Gujarat** it was held that, PPF account cannot be attached for recovery of tax dues.

PART - B

1. Preamble

Central Board of Direct Taxes (CBDT) issued Office Memorandum dated 29/02/16 bearing no. 404/72/93-ITCC Partially modifying Instruction no.1914 dated 21/03/96 to provide for guidelines or stay of demand at the first appeal stage.

As per part-c of the Instruction no.1914, the stay was to be granted if there was a valid reason. Simply because an appeal was filed by an assessee against the assessment order, was not considered a sufficient reason to stay the demand. As per this instruction, assessee was required to offer suitable security in the form of bank guarantee or to pay reasonable amount in lump sum or in installments.

It was brought to the notice of CBDT that assessing officers were insisting on payment of very high proportion of the disputed demand before granting stay. This results in **hardship** for the tax payers seeking stay of demand.

In order to streamline the process of grant of stay and standardize the quantum of lump sum payment required to be made by the assessee as a pre-condition for stay of demand disputed before CIT(A), CBDT issued modified guidelines in partial modification of Instruction no. 1914.

1. **Summary of amended instruction.**

- a. Against the assessment order if an appeal is filed to CIT(A), assessee will be required to pay 15% of disputed tax.
- b. As per the view of the assessing officer in the cases where addition on the same issue was confirmed by appellate authorities in earlier years or decision of jurisdictional High Court or Supreme Court is in favour of the revenue or addition is based on credible evidences collected in a search or survey operation etc., in such cases payment higher than 15% will be required to be paid by the assessee.
- c. As per the view of the assessing officer in the cases where addition on the same issue was deleted by appellate authorities in earlier years or decision of jurisdictional High Court or Supreme Court is in favour of the assessee, in such cases the assessing officer shall refer the matter to the Principal CIT/CIT. Principal CIT/CIT after considering all relevant facts shall decide the quantum of tax to be paid by the assessee as lump sum payment for granting a stay of the balance demand.
- d. When stay is granted by the assessing officer on payment of 15% of the disputed demand and the assessee is still aggrieved, he may approach the Jurisdictional Principal CIT / CIT for review of the decision of the assessing officer.
- e. The assessing officer shall dispose of stay petition within 2 weeks of filing of the petition. When the matter is referred by the assessing officer to Principal CIT / CIT, such application shall be disposed of by Principal CIT / CIT within 2 weeks from the date of reference received from the assessing officer or the assessee as the case may be.
- f. While granting stay, the assessing officer may impose such conditions as he may think fit.
 - i. Require an under taking from the assessee that he will co-operate in the early disposal of appeal failing which the stay will be cancelled.
 - ii. Reserve the right to review the stay order after 6 months. If the assessee has not co-operated in early disposal of appeal or the issue involved is decided against the assessee by higher appellate authority or court, order of stay will be reviewed accordingly.
 - iii. Reserve the right to adjust refunds arising if any against the outstanding demand to the extent of the amount required for granting stay and subject to provision of section 245.

2. Comments :

- a. This official memorandum is issued to reduce hardship causing to the assesses where the demands are disputed in appeal. Thus according to my view it will be applicable even to pending appeals as held in the case of **CIT V/s. Alom Extrusions Ltd. reported in 319 ITR 306 SC.**
- b. In this official memorandum, word lump sum is mentioned. The department will insist for onetime payment. According to my view assessee can insist for reasonable installments.
- c. If stay is granted to the assessee on payment of 15% of disputed tax, it has been directed to adjust future refund / refunds due to the assessee to the extent of 15% or more as the case may be.
- d. When the assessment is framed which is high pitched, decisions given in part-1 of this paper as well as instructions given may be brought to the concern authority for reducing the quantum of 15%.

3. Conclusion :

In this paper I have tried to cover most of the issues in relation to recovery of disputed tax. As there was no uniform policy, the assessing officers were reluctant to grant stay unless 50% of disputed tax was paid. Bank accounts were attached without considering the merits of assessment order only to achieve revenue targets. After the appeal was decided in favour of the assessee, the assessee was finding it difficult to get back the amount paid against disputed tax.

It is also admitted by the higher departmental officers that 90% of the appeals are decided against the department but the hassle faced by the assessee for granting stay cannot be equated in terms of rupees. By giving direction to the assessing officer to collect only 15% is defiantly a relief to the poor assessee who is facing appellate proceedings.

Even 15% of tax in case of high pitched assessment will come to substantial amount which could be seen from the following example.

- a. In case of returned income for A.Y.2013-14 is Rs.10,00,000/-. Assessee will be required to pay tax Rs.133900/-. Against that he paid advance tax of Rs.40000/- before 15/09/2012, Rs.40000/- before 15/12/2012 and Rs.45000/- before 15/03/2013 and paid Rs.8900/- u/s.140A. Thus no tax or interest is payable on the returned income.
- b. If this returned income is assessed of Rs.20,00,000/- in March 2016 the assessee will be required to pay tax Rs.434880/- after considering advance tax and 140A paid and interest payable u/s.234B and 234C. Thus on account of addition of Rs.10,00,000/- additional tax liability of Rs.434880/- will arise.
- c. If this returned income is assessed of Rs.30,00,000/- in March 2016 the assessee will be required to pay tax Rs.866550/- after considering advance tax and 140A paid and interest payable u/s.234B and 234C. Thus on account of addition of Rs.20,00,000/- additional tax liability of Rs.866550/- will arise.
- d. If this returned income is assessed of Rs.40,00,000/- in March 2016 the assessee will be required to pay tax Rs.1298220/- after considering advance tax and 140A paid and interest payable u/s.234B and 234C. Thus on account of addition of Rs.30,00,000/- additional tax liability of Rs.1298220/- will arise.
- e. If this returned income is assessed of Rs.50,00,000/- in March 2016 the assessee will be required to pay tax Rs.1729900/- after considering advance tax and 140A paid and interest payable u/s.234B and 234C. Thus on account of addition of Rs.40,00,000/- additional tax liability of Rs.1729900/- will arise.
- f. If this returned income is assessed of Rs.1,00,00,000/- in March 2016 the assessee will be required to pay tax Rs.3888260/- after considering advance tax and 140A paid and interest payable u/s.234B and 234C. Thus on account of addition of Rs.90,00,000/- additional tax liability of Rs.3888260/- will arise.

Though the assessee can approach to the higher authorities for reduction of 15% of disputed tax amount. In such cases judicious approach of higher authorities will be appreciated.

Powers of reducing 15% of disputed tax are given to the higher authorities but not to the Commissioner (Appeals). If CIT(A) is given powers, judicious decision may be taken looking to the facts of each case. Anyhow even this 15% tax will reduce the hardship to the assesses.

I wish this seminar a Grand Success.

BIO - DATA

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- Public Activities : - Member RDTAC, Rajkot for 2 years since 08.04.2010
- National Vice President, All India Federation of Tax Practitioners
- Past President of All Gujarat Federation of Tax Consultants
- Co-opted Executive Committee Member of GCCI for 2 terms.
- Member, GEB for 1 1/2 years.
- Vice President, Western Gujarat Chamber of Industries.
- Vice President, All Gujarat Federation of Tax Consultants for 3 years.
- Hon. Secretary, Federation of Saurashtra & Kutch Chamber of Commerce.
- Trustee, Rupayatan Trust.
- Trustee, Shishumangal Trust, Junagadh.
- Hon. Secretary, Taxation Advisers Association.
- Member, Advisory Board-Veraval Mercantile Co.Op.Bank
- Trustee, Gandhinagar Charitable Trust
- Father's Activity : - Ex. Committee Member, GCCI.
- Trustee, Shishumangal Trust.
- President, Junagadh Chamber of Commerce 13 years.
- Member, DRUCC & ZRUCC of Railways.
- Mother's Activity : - Rashtrapati Award Winner for service to Orphan Child - 1995.
- State Award Winner for Social Service - 1994.

RECENT RELEVANT INSTRUCTIONS & CIRCULARS AND IT'S IMPLICATIONS

I T BAR ASSOCIATION, AHMEDABAD

RESIDENTIAL REFRESHER COURSE

KOVALAM (KERALA)

8th to 11th APRIL, 2016

SAMIR S JANI

<u>Sr. No.</u>	<u>Particulars</u>
1.	Discussion on New Notifications for Financial Transactions
2	Notification for certain financial transaction dtd.30/12/2015
3	Notification amending Rule-114E dated 18.03.2015
4	Circular No.6/2015 for Business Income – Capital Gains
5	Clarification dated 16.03.2016 for Penny Stock Companies
6	Notification dated 01/12/2015 for E Filling of Form 15G & H
7	General Instructions for E Filling of First Appeal
8	Office Memorandum for Stay of Demand
9	Clarification for adjustment of demand for A.Y.2015-16 Section.245

TRANSACTIONS WHICH REQUIRE QUOTING OF PERMANENT ACCOUNT NUMBER

Central Government has through CBDT come out with a Notification No. SO 3545(E) {95/2015 (F No.142/28/2012-(SO)TPL)} dated 30.12.2015 amending Rule 114B, 114C, 114D, 114E, Form 60, 61 & 61A whereby Quoting of PAN No. in certain invoices or other documents, verification of such PAN No. & time, manner in which shall assessee shall furnish Form No.60 has been made effective from 01.01.2016 while amended Forms are with effect from 01.04.2016.

Prior to these amendments certain transactions were required to be reported to Income Tax like Sale or Purchase of Motor Vehicle, Opening of an bank account other than Savings Bank & Time deposit account, Issuance of Debit & Credit card, Opening a Demat account, Payment to a Hotel or Restaurant in excess of Rs.50000, Purchase of units in excess of Rs.50000, Purchase of Debentures or Bonds in excess of Rs.50000, Purchase of RBI Bonds in excess of Rs.50000, Purchase of bank drafts/pay order/bankers cheque in excess of Rs.50000, Time Deposit in excess of Rs.50000, Pre-paid payment instrument in excess of Rs.50000, Payment as Life Insurance premium in excess of Rs.50000, Sale or Purchase of securities in excess of Rs.50000, Sale or Purchase of shares of a private company in excess of Rs.100000, Sale or Purchase of any Immovable Property in excess of Rs.1000000. Through the amendment Item 18 was introduced which includes **Sale or Purchase, by any person, of goods or services, which are not covered in Item 1 to 17 for an amount exceeding Rs.200000 per transaction.** The transaction value is per transaction and not aggregate of all such transactions during financial year. In case it is cash transaction it is aggregate of transaction during the financial year.

This means that all transactions undertaken in excess of Rs.200000/-, whether they business transaction or personal, stand covered under Item 18 of Rule 114B except they are with Central or State Government and a non resident for certain specified transactions. Provisions similar to that in Rule 6DD are not made here. That means that transaction of Sale or Purchase of agriculture produce stand covered under the notification dated 30.12.2015. All such transactions require compulsory quoting of PAN on documents for sale like Invoice, Delivery Challan, Agreement, Debit Note etc. In case if the buyer or recipient of service is a minor, the PAN No. of father, mother or guardian is to be quoted. It is the duty of person furnishing statement for verification of PAN. If the statement of financial transaction is found to be inaccurate (including quoting of wrong PAN) a penalty u/s. 272B of Rs.10000, 271FAA of Rs.50000/- shall be levied subject to certain conditions. As such verification as to correctness of PAN should be made on the web site and printout be retained.

In case if the buyer or service recipient does not hold the PAN No. he shall furnish Form 60 with estimated total income for such financial year to such seller or service provider who in turn shall report such transaction in Form 61 half yearly. Where a PAN is furnished, the seller or service provider shall furnish such information in Form 61A half yearly through electronic media. Form 60 is to be retained for six years from the end of the financial year in which such transaction took place. The assessee is not

prohibited from making cash sales but in that case he has to file Form 61A with information of cash sales incorporated therein and documents as required under KYC norms and retain all such documents for six years as stated earlier. Since the rule does not refer to cash transaction, it will apply to transactions in cash, cheque or kind.

However, Rule 114E, which requires furnishing of statement of financial transactions states that Receipt of cash payment exceeding two lakh rupees for sale, by any person, of goods or services shall be furnished in Form 61A and shall be applicable to seller person liable to audit under section 44AB. Meaning thereby, that those not liable to audit are not required to report cash transactions. For the purpose of calculating the threshold limit of Rs. 2 lac aggregate of all such nature transaction during the financial year. This means that you are supposed to retain records for various transactions entered in to with such person during financial year to prove that the aggregate transactions do not exceed Rs.2 Lac annually.

Every reporting person is required to obtain Form 60 and furnish information in Form 61/61A and also required to obtain registration number by such person from Principal Director General of Income Tax (System). Form 61 has to be furnished on half yearly basis while Form 61A has to be furnished annually by 31 st May through electronic media with digital signature. Failure to furnish Annual Information Return covered under section 285BA would attract penalty of Rs.500/- for each day of default. A wrong declaration in Form 60 is liable to proceedings under section 277 (Prosecution).

Reporting of Sale or Purchase of Immovable transaction in excess of Rs.10 Lac requires the registering authority to report such transaction but after insertion of Item 18 a builder or a real estate developer would be required to report sale or purchase of immovable property in excess of Rs.2 lac in my opinion. Similarly, when your sale a Motor Vehicle in excess of Rs.10 lac which may be your personal asset you are required to observe the formalities of Rule 114B, C, D, E and Section 206C.

Obtaining of Form 60 is applicable from	01.01.2016
Furnishing of information in Form 61as on 31 st March	30 th April
Furnishing of information in Form 61as on 30 th Sept.	30 th October
Furnishing of information in Form 61A as on 30 st March	30 th May

Rule 114E & Form 61A has been amended vide notification dated 18.03.2016 and all transactions stated in 114B & 114E (cash/cheque/Form 60) are to be reported annually in Form 61A.

Amendment to 206C (1D) & (1E) with effect from 01.06.2016 requires every sale or service in excess of Rs. 2 lac would be subject to 1% TCS which is irrespective of mode of payment. (Cash/Cheque). Likewise purchase of Motor Vehicle in excess of Rs.10 Lac is also subject to 1% TCS. Similar provision did exist for Bullion sale in excess of Rs.2 Lac and Jewellery sale in excess of Rs. 5 Lac for 1% TCS.

The intention of the legislature for introducing this reporting transaction is to check evasion of tax. It is advisable that when your clients make payment to a hotel or restaurant, purchase units, purchase a bank draft, purchase of shares, purchase of shares of private company, sale or purchase of Immovable Property, Sale or Purchase of goods or services etc in excess of certain amount should duly be recorded in books of accounts as such transactions shall be subject scrutiny, reassessment by Income Tax authorities.

INCOME-TAX (TWENTY SECOND AMENDMENT) RULES, 2015 - SUBSTITUTION OF RULES 114B, 114C, 114D, 114E, FORM NOS.60, 61 AND 61A

NOTIFICATION NO.SO 3545(E) [95/2015 (F.NO.142/28/2012-(SO)TPL)], DATED 30-12-2015

In exercise of the powers conferred by section 139A, section 271FAA and section 285BA, read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:—

1. (1) These rules may be called the Income-tax (22nd Amendment) Rules, 2015.

(2) Rules 114B, 114C and 114D shall come into force from the 1st day of January, 2016 and rule 114E shall come into force from the 1st day of April, 2016.

2. In the Income-tax Rules, 1962 (hereinafter referred to as the said rules), for rules 114B, 114C, 114D and 114E, the following rules shall respectively be substituted, namely:—

"114B. *Transactions in relation to which permanent account number is to be quoted in all documents for the purpose of clause (c) of sub-section (5) of section 139A.*—Every person shall quote his permanent account number in all documents pertaining to the transactions specified in the Table below, namely:—

TABLE

Sl. No.	Nature of transaction	Value of transaction
(1)	(2)	(3)
1.	Sale or purchase of a motor vehicle or vehicle, as defined in clause (28) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988) which requires registration by a registering authority under Chapter IV of that Act, other than two wheeled vehicles.	All such transactions.
2.	Opening an account [other than a time-deposit referred to at Sl. No.12 and a Basic Savings Bank Deposit Account] with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act).	All such transactions.
3.	Making an application to any banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act) or to any other company or institution, for issue of a credit or	All such transactions.

debit card.

4. Opening of a demat account with a depository, All such transactions. participant, custodian of securities or any other person registered under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992).
5. Payment to a hotel or restaurant against a bill or Payment in cash of an amount bills at any one time. exceeding fifty thousand rupees.
6. Payment in connection with travel to any foreign country or payment for purchase of any foreign currency at any one time. Payment in cash of an amount exceeding fifty thousand rupees.
7. Payment to a Mutual Fund for purchase of its units. Amount exceeding fifty thousand rupees.
8. Payment to a company or an institution for acquiring debentures or bonds issued by it. Amount exceeding fifty thousand rupees.
9. Payment to the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934) for acquiring bonds issued by it. Amount exceeding fifty thousand rupees.
10. Deposit with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act). Deposits in cash exceeding fifty thousand rupees during any one day.
11. Purchase of bank drafts or pay orders or banker's cheques from a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act). Payment in cash for an amount exceeding fifty thousand rupees during any one day.
12. A time deposit with,— Amount exceeding fifty thousand rupees or aggregating to more than five lakh rupees during a financial year.
 - (i) a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act);
 - (ii) a Post Office;
 - (iii) a Nidhi referred to in section 406 of the

Companies Act, 2013 (18 of 2013); or

- (iv) a non-banking financial company which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934), to hold or accept deposit from public.
13. Payment for one or more pre-paid payment instruments, as defined in the policy guidelines for issuance and operation of pre-paid payment instruments issued by Reserve Bank of India under section 18 of the Payment and Settlement Systems Act, 2007 (51 of 2007), to a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act) or to any other company or institution. Payment in cash or by way of a bank draft or pay order or banker's cheque of an amount aggregating to more than fifty thousand rupees in a financial year.
 14. Payment as life insurance premium to an insurer as defined in clause (9) of section 2 of the Insurance Act, 1938 (4 of 1938). Amount aggregating to more than fifty thousand rupees in a financial year.
 15. A contract for sale or purchase of securities (other than shares) as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956). Amount exceeding one lakh rupees per transaction.
 16. Sale or purchase, by any person, of shares of a company not listed in a recognised stock exchange. Amount exceeding one lakh rupees per transaction.
 17. Sale or purchase of any immovable property. Amount exceeding ten lakh rupees or valued by stamp valuation authority referred to in section 50C of the Act at an amount exceeding ten lakh rupees.
 18. Sale or purchase, by any person, of goods or services of any nature other than those specified at Sl. No. 1 to 17 of this Table, if any. Amount exceeding two lakh rupees per transaction:

Provided that where a person, entering into any transaction referred to in this rule, is a minor and who does not have any income chargeable to income-tax, he shall quote the permanent account number of his father or mother or guardian, as the case may be, in the document pertaining to the said transaction:

Provided further that any person who does not have a permanent account number and who enters into any transaction specified in this rule, he shall make a declaration in Form No.60 giving therein the particulars of such transaction:

Provided also that the provisions of this rule shall not apply to the following class or classes of persons, namely:—

- (i) the Central Government, the State Governments and the Consular Offices; ,
- (ii) the non-residents referred to in clause (30) of section 2 of the Act in respect of the transactions other than a transaction referred to at Sl. No. 1 or 2 or 4 or 7 or 8 or 10 or 12 or 14 or 15 or 16 or 17 of the Table.

Explanation.—For the purposes of this rule,—

- (1) "payment in connection with travel" includes payment towards fare, or to a travel agent or a tour operator, or to an authorised person as defined in clause (c) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999);
- (2) "travel agent or tour operator" includes a person who makes arrangements for air, surface or maritime travel or provides services relating to accommodation, tours, entertainment, passport, visa, foreign exchange, travel related insurance or other travel related services either severally or in package;
- (3) "time deposit" means any deposit which is repayable on the expiry of a fixed period.

114C. *Verification of Permanent Account Number in transactions specified in rule 114B.*—(1) Any person being,—

- (a) a registering officer or an Inspector-General appointed under the Registration Act, 1908 (16 of 1908);
- (b) a person who sells the immovable property or motor vehicle;
- (c) a manager or officer of a banking company or co-operative bank, as the case may be, referred to at Sl. No. 2 or 3 or 10 or 11 or 12 or 13 of rule 114B;
- (d) post master;
- (e) stock broker, sub-broker, share transfer agent, banker to an issue, trustee of a trust deed, registrar to issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediaries registered under sub-section (1) section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (f) a depository, participant, custodian of securities or any other person registered under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) referred to at Sl. No. 4 of rule 114B;
- (g) the principal officer of a company referred to at Sl. No. 3 or 4 or 8 or 12 or 13 or 15 or 16 of rule 114B;
- (h) the principal officer of an institution referred to at Sl. No. 2 or 3 or 8 or 10 or 11 or 12 or 13 of rule 114B;
- (i) any trustee or any other person duly authorised by the trustee of a Mutual Fund referred to

at Sl. No. 7 of rule 114B;

- (j) an officer of the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934), or of any agency bank authorised by the Reserve bank of India;
- (k) a manager or officer of an insurer referred to at Sl. No. 14 of rule 114B,

who, in relation to a transaction specified in rule 114B, has received any document shall ensure after verification that permanent account number has been duly and correctly mentioned therein or as the case may be, a declaration in Form 60 has been duly furnished with complete particulars.

(2) Any person, being a person raising bills referred to at Sl. No. 5 or 6 or 18 of rule 114B, who, in relation to a transaction specified in the said Sl. No., has issued any document shall ensure after verification that permanent account number has been correctly furnished and the same shall be mentioned in such document, or as the case may be, a declaration in Form 60 has been duly furnished with complete particulars.

114D. *Time and manner in which persons referred to in rule 114C shall furnish a statement containing particulars of Form No. 60.*—(1) Every person referred to in,—

- (I) clauses (b) to (k) of sub-rule (1) of rule 114C; and
- (II) sub-rule (2) of rule 114C and who is required to get his accounts audited under section 44AB of the Act,

who has received any declaration in Form No. 60, on or after the 1st day of January, 2016, in relation to a transaction specified in rule 114B, shall—

- (i) furnish a statement in Form No. 61 containing particulars of such declaration to the Director of Income-tax (Intelligence and Criminal Investigation) or the Joint Director of Income-tax (Intelligence and Criminal Investigation) through online transmission of electronic data to a server designated for this purpose and obtain an acknowledgement number; and
- (ii) retain Form No. 60 for a period of six years from the end of the financial year in which the transaction was undertaken.

(2) The statement referred to in clause (i) of sub-rule (1) shall,—

- (i) where the declarations are received by the 30th September, be furnished by the 31st October of that year; and (ii) where the declarations are received by the 31st March, be furnished by the 30th April of the financial year immediately following the financial year in which the form is received.

(3) The statement referred to in clause (i) of sub-rule (1) shall be verified—

- (a) in a case where the person furnishing the statement is an assessee as defined in clause (7) of section 2 of the Act, by a person specified in section 140 of the Act;
- (b) in any other case, by the person referred to in rule 114C.

114E. *Furnishing of statement of financial transaction.*—(1) The statement of financial transaction required to be furnished under sub-section (1) of section 285BA of the Act shall be furnished in respect of a financial year in Form No. 61A and shall be verified in the manner indicated therein.

(2) The statement referred to in sub-rule (1) shall be furnished by every person mentioned in column (3) of the Table below in respect of all the transactions of the nature and value specified in the corresponding entry in column (2) of the said Table in accordance with the provisions of sub-rule (3), which are registered or recorded by him on or after the 1st day of April, 2016, namely:—

TABLE

Sl.No.	Nature and value of transaction	Class of person (reporting person)
(1)	(2)	(3)
1.	<p>(a) Payment made in cash for purchase of bank drafts or pay orders or banker's cheque of an amount aggregating to ten lakh rupees or more in a financial year.</p> <p>(b) Payments made in cash aggregating to ten lakh rupees or more during the financial year for purchase of pre-paid instruments issued by Reserve Bank of India under section 18 of the Payment and Settlement Systems Act, 2007 (51 of 2007).</p> <p>(c) Cash deposits or cash withdrawals (including through bearer's cheque) aggregating to fifty lakh rupees or more in a financial year, in or from one or more current account of a person.</p>	<p>A banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act).</p>
2.	Cash deposits aggregating to ten lakh rupees or more in a financial year, in one or more accounts (other than a current account and time deposit) of a person.	<p>(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);</p> <p>(ii) Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898).</p>
3.	One or more time deposits (other than a time deposit made through renewal of another time deposit) of a person aggregating to ten lakh rupees or more in a financial year of a person.	<p>(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);</p> <p>(ii) Post Master General as referred</p>

- to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898);
- (iii) Nidhi referred to in section 406 of the Companies Act, 2013 (18 of 2013);
- (iv) Non-banking financial company which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934 (6 of 1934), to hold or accept deposit from public.
- A banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act) or any other company or institution issuing credit card.
- A company or institution issuing bonds or debentures.
- A company issuing shares.
- A company listed on a recognised stock exchange purchasing its own securities under section 68 of the Companies Act, 2013 (18 of 2013).
- A trustee of a Mutual Fund or such other person managing the affairs of the Mutual Fund as may be duly authorised by the trustee in this behalf.
4. Payments made by any person of an amount aggregating to—
 - (i) one lakh rupees or more in cash; or
 - (ii) ten lakh rupees or more by any other mode, against bills raised in respect of one or more credit cards issued to that person, in a financial year.
 5. Receipt from any person of an amount aggregating to ten lakh rupees or more in a financial year for acquiring bonds or debentures issued by the company or institution (other than the amount received on account of renewal of the bond or debenture issued by that company).
 6. Receipt from any person of an amount aggregating to ten lakh rupees or more in a financial year for acquiring shares (including share application money) issued by the company.
 7. Buy back of shares from any person (other than the shares bought in the open market) for an amount or value aggregating to ten lakh rupees or more in a financial year.
 8. Receipt from any person of an amount aggregating to ten lakh rupees or more in a financial year for acquiring units of one or more schemes of a Mutual Fund (other than the amount received on account of transfer from one scheme to another scheme of that Mutual Fund).

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| 9. | Receipt from any person for sale of foreign currency including any credit of such currency to foreign exchange card or expense in such currency through a debit or credit card or through issue of travellers cheque or draft or any other instrument of an amount aggregating to ten lakh rupees or more during a financial year. | Authorised person as referred to in clause (c) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999). |
| 10. | Purchase or sale by any person of immovable property for an amount of thirty lakh rupees or more or valued by the stamp valuation authority referred to in section 50C of the Act at thirty lakh rupees or more. | Inspector-General appointed under section 3 of the Registration Act, 1908 or Registrar or Sub-Registrar appointed under section 6 of that Act. |
| 11. | Receipt of cash payment exceeding two lakh rupees for sale, by any person, of goods or services of any nature (other than those specified at Sl. No. 1 to 10 of this rule, if any). | Any person who is liable for audit under section 44AB of the Act. |

(3) The reporting person mentioned in column (3) of the Table under sub-rule (2) (other than the person at Sl.No.9) shall, while aggregating the amounts for determining the threshold amount for reporting in respect of any person as specified in column (2) of the said Table,—

- (a) take into account all the accounts of the same nature as specified in column (2) of the said Table maintained in respect of that person during the financial year;
- (b) aggregate all the transactions of the same nature as specified in column (2) of the said Table recorded in respect of that person during the financial year;
- (c) attribute the entire value of the transaction or the aggregated value of all the transactions to all the persons, in a case where the account is maintained or transaction is recorded in the name of more than one person;
- (d) apply the threshold limit separately to deposits and withdrawals in respect of transaction specified in item (c) under column (2), against Sl. No. 1 of the said Table.

(4)(a) The return in Form No. 61A referred to in sub-rule (1) shall be furnished to the Director of Income-tax (Intelligence and Criminal Investigation) or the Joint Director of Income-tax (Intelligence and Criminal Investigation) through online transmission of electronic data to a server designated for this purpose under the digital signature of the person specified in sub-rule (7) and in accordance with the data structure specified in this regard by the Principal Director General of Income-tax (Systems):

Provided that in case of a reporting person, being a Post Master General or a Registrar or an Inspector General referred to in sub-rule (2), the said return in Form 61A may be furnished in a computer readable media, being a Compact Disc or Digital Video Disc (DVD), along with the verification in Form-V on paper.

Explanation.- For the purposes of this sub-rule, "digital signature" means a digital signature issued by any Certifying Authority authorised to issue such certificates by the Controller of Certifying Authorities.

(b) Principal Director General of Income-tax (Systems) shall specify the procedures, data structures and standards for ensuring secure capture and transmission of data, evolving and implementing appropriate security, archival and retrieval policies.

(c) The Board may designate an officer as Information Statement Administrator, not below the rank of a Joint Director of Income-tax for the purposes of day to day administration in relation to the furnishing of returns or statements.

(5) The statement of financial transactions referred to in sub-rule (1) shall be furnished on or before the 31st May, immediately following the financial year in which the transaction is registered or recorded.

(6) (a) Every reporting person mentioned in column (3) of the Table under sub-rule (2) shall communicate to the Principal Director General of Income-tax (Systems) the name, designation, address and telephone number of the Designated Director and the Principal Officer and obtain a registration number.

(b) It shall be the duty of every person specified in column (3) of the Table under sub-rule (2), its Designated Director, Principal Officer and employees to observe the procedure and the manner of maintaining information as specified by its regulator and ensure compliance with the obligations imposed under section 285BA of the Act and rules 114B to 114D and this rule.

Explanation 1.—"Designated Director" means a person designated by the reporting person to ensure overall compliance with the obligations imposed under section 285BA of the Act and the rules 114B to 114D and this rule and includes—

- (i) the Managing Director or a whole-time Director, as defined in the Companies Act, 2013 (18 of 2013), duly authorised by the Board of Directors if the reporting person is a company;
- (ii) the managing partner if the reporting person is a partnership firm;
- (iii) the proprietor if the reporting person is a proprietorship concern;
- (iv) the managing trustee if the reporting person is a trust;
- (v) a person or individual, as the case may be, who controls and manages the affairs of the reporting entity if the reporting person is, an unincorporated association or, a body of individuals or, any other person.

Explanation 2.- "Principal Officer" means an officer designated by the reporting person referred to in the Table in sub-rule (2).

Explanation 3.- "Regulator" means a person or an authority or a Government which is vested with the power to license, authorise, register, regulate or supervise the activity of the reporting person referred to in the Table in sub-rule (2).

(7) The statement of financial transaction referred to in sub-rule (1) shall be signed, verified and furnished by the Designated Director specified in sub-rule (6):

Provided that where the reporting person is a non-resident, the statement may be signed, verified and furnished by a person who holds a valid power of attorney from such Designated Director".

3. In the said rules, in Appendix-II, for "Forms 60, 61 and 61A" the following "Forms 60, 61 and 61A" shall respectively be substituted, namely:—

"FORM NO. 60

[See second proviso to rule 114B]

Form for declaration to be filed by an individual or a person (not being a company or firm) who does not have a permanent account number and who enters into any transaction specified in rule 114B

FORM NO. 61

[See sub-rule (1) of rule 114D]

Statement containing particulars of declaration received in Form No. 60

FORM No. 61A

[See rule 114E]

Statement of Specified Financial Transactions under section 285BA(1) of the Income-tax Act, 1961

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II,
SECTION 3, SUB-SECTION (ii)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
[CENTRAL BOARD OF DIRECT TAXES]

Notification

New Delhi, the 18th March, 2016

S.O.1155 (E)- In exercise of the powers conferred by section 285BA, read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. This rule may be called the Income-tax (7th Amendment) Rule, 2016 and shall be deemed to have come into force from the 1st day of April, 2015.

2. In the Income-tax Rules, 1962 (hereinafter referred to as the Rules), in rule 114E,—

(i) in the marginal heading, after the words "Information Return", the words "or Statement of Financial Transactions" shall be inserted;

(ii) in sub-rule (1), for the words "annual information return", the words "annual information return or statement of financial transactions, as the case may be," shall be substituted;

(iii) in sub-rule (4),—

(I) in clause (a),—

(A) for the word "return", wherever it occurs, the words "return or statement" shall be substituted;

(B) in both the provisos, for the words and figure "Annual Information Return-Administrator", wherever they occur, the words and figure "Annual Information Return or Statement of Financial Transaction- Administrator" shall be substituted;

(II) in clause (b),—

(A) in the long line, for the word "return", the words "return or the statement" shall be substituted;

(B) in clause (ii), for the word "return", the words "return or the statement" shall be substituted;

(iv) in sub-rule (7), for the words "Annual Information Return", the words "Annual Information Return or Statement of Financial Transaction" shall be substituted;

(v) in this rule, except sub-rules (1), (4) and (7), for the word "return", wherever it occurs, the words "return or statement" shall be substituted.

3. In the Appendix II to the Rules, in Form No.61A,—

(a) for the words "Annual Information Return", wherever they occur, the words "Annual Information Return or Statement of Financial Transactions" shall be substituted;

(b) for the word "return", wherever it occurs, the words "return or statement" shall be substituted.

4. Rule 114E of the Rules, as amended by this rule shall be applicable for the specified financial transactions carried out during the period from 1st April, 2015 to 31st March, 2016.

[Notification No.19/2016][F.No.142/28/2012-(SO)TPL]

(Ekta Jain)

Deputy Secretary to Government of India

Note:- The principal rules were published vide notification S.O. 969 (E), dated the 26th March, 1962 and last amended vide notification S.O.1146 (E), dated the 17th March 2016.

SECTION 45, READ WITH SECTION 28(i), OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS, CHARGEABLE AS - ISSUE OF TAXABILITY OF SURPLUS ON SALE OF SHARES AND SECURITIES - CAPITAL GAINS OR BUSINESS INCOME - INSTRUCTIONS IN ORDER TO REDUCE LITIGATION

CIRCULAR NO.6/2016 [F.NO.225/12/2016-ITA-II], DATED 29-2-2016

Sub-section (14) of section 2 of the Income-tax Act, 1961 ('Act') defines the term "capital asset" to include property of any kind held by an assessee, whether or not connected with his business or profession, but does not include any stock-in-trade or personal assets subject to certain exceptions. As regards shares and other securities, the same can be held either as capital assets or stock-in-trade/trading assets or both. Determination of the character of a particular investment in shares or other securities, whether the same is in the nature of a capital asset or stock-in-trade, is essentially a fact-specific determination and has led to a lot of uncertainty and litigation in the past.

2. Over the years, the courts have laid down different parameters to distinguish the shares held as investments from the shares held as stock-in-trade. The Central Board of Direct Taxes ('CBDT') has also, through Instruction No. 1827, dated August 31, 1989 and Circular No. 4 of 2007 dated June 15, 2007, summarized the said principles for guidance of the field formations.

3. Disputes, however, continue to exist on the application of these principles to the facts of an individual case since the taxpayers find it difficult to prove the intention in acquiring such shares/securities. In this background, while recognizing that no universal principal in absolute terms can be laid down to decide the character of income from sale of shares and securities (i.e. whether the same is in the nature of capital gain or business income), CBDT realizing that major part of shares/securities transactions takes place in respect of the listed ones and with a view to reduce litigation and uncertainty in the matter, in partial modification to the aforesaid Circulars, further instructs that the Assessing Officers in holding whether the surplus generated from sale of listed shares or other securities would be treated as Capital Gain or Business Income, shall take into account the following—

- (a) Where the assessee itself, irrespective of the period of holding the listed shares and securities, opts to treat them as stock-in-trade, the income arising from transfer of such shares/securities would be treated as its business income,
- (b) In respect of listed shares and securities held for a period of more than 12 months immediately preceding the date of its transfer, if the assessee desires to treat the income arising from the transfer thereof as Capital Gain, the same shall not be put to dispute by the

Assessing Officer. However, this stand, once taken by the assessee in a particular Assessment Year, shall remain applicable in subsequent Assessment Years also and the taxpayers shall not be allowed to adopt a different/contrary stand in this regard in subsequent years;

- (c) In all other cases, the nature of transaction (i.e. whether the same is in the nature of capital gain or business income) shall continue to be decided keeping in view the aforesaid Circulars issued by the CBDT.

4. It is, however, clarified that the above shall not apply in respect of such transactions in shares/securities where the genuineness of the transaction itself is questionable, such as bogus claims of Long Term Capital Gain/Short Term Capital Loss or any other sham transactions.

5. It is reiterated that the above principles have been formulated with the sole objective of reducing litigation and maintaining consistency in approach on the issue of treatment of income derived from transfer of shares and securities. All the relevant provisions of the Act shall continue to apply on the transactions involving transfer of shares and securities.

Note:

It is good gesture from CBDT so as to reduce litigation in many cases either pending before CIT (Appeals), Tribunal or Courts. As all are aware about holding of LTCG/STCG transactions during financial year as Business Income has been the practice with department while making an assessment. Where the assessee has himself shown such listed share investment as stock-in-trade, irrespective of period of holding, the income on sale would be assessed as business income but where such listed shares having holding period of more than 12 months is shown as Investment it would be taxed as LTCG and not be disputed by the department. No change in approach of the assessee would thereafter be permitted. For STCG Circular No.4 of 2007 shall be the guide for taxing it. This circular is restricted for genuine listed securities transactions only and would not apply to shares of private companies and sham or non genuine transactions.

**SECTION 69 OF THE INCOME-TAX ACT, 1961 - UNDISCLOSED INVESTMENTS -
UPLOADING OF INFORMATION RELATED TO PENNY STOCK IN RESPECT OF
ASSESSEES**

LETTER F.NO.287/30/2014-IT (INV.II)-VOL-III, DATED 16-3-2016

REF : EFS Instruction No.53 of Directorate of Systems dated 08.03.2016

Kind attention is invited to the above referred EFS Instruction issued by the System Directorate regarding handling cases of Penny Stocks (suspect Long Term Capital Gains/Short Term Capital Loss etc).

2. It is informed that the said instruction is in the context of investigation conducted by Kolkata Investigation Directorate in respect of large number of penny stock companies, whose share prices were artificially raised on the Stock Exchanges in order to book bogus claims of Long Term Capital Gains or Short Term Capital Loss by various beneficiaries. Extensive investigation, including search and seizure/survey action on entry providers, riggers, beneficiaries etc. was conducted by the Investigation Directorate in such cases. Based upon outcome of such investigation and analysis of the data, the Systems Directorate has now uploaded details of such information in respect of individual assesseees who have made transactions in such penny stocks.

3. Vide EFS Instruction under reference a new button 'Penny Stock' has been added on Individual Transaction Screen (ITS) to display information related to penny stock, now enabled on the screen of the Assessing Officers (AOs). Available information regarding the manipulative transactions has been captured in the functionality, including the investigation report of the Kolkata Investigation Directorate. The functionality also contains a guidance note for the Assessing Officers. Such details are visible to the AOs of those assesseees whose particulars have emanated out of the investigation report of Kolkata Investigation Directorate and whose cases have been considered actionable, at this stage. The details are also visible to supervisory officers of such AOs.

4. In case of any difficulty in viewing the information on ITS, Shri Vipul Agarwal, JDIT (Sys) 2(1) could be contacted on 0120-2770052 or email at vipul.agarwal@nic.in

5. The undersigned is directed to request that necessary directions may kindly be issued to the officers working under your jurisdiction to access this functionality and ensure that information available in the 'Penny Stock' functionality which may be useful for the purpose of cases presently under scrutiny, is examined and considered while finalizing assessments and considering reopening of cases under section 148 of the IT Act, 1961.

6. This issues with the approval of Member (Inv), CBDT.

Note:

It has been a practice for capital building to obtain tax free income in the form of Long Term Capital Gain from entry providers which has come to the notice of department and are now subject to scrutiny from department to hold that such non genuine transactions are subject to tax as Undisclosed Income liable to tax, interest & penalty (which is after the amendment made mandatory). Post circular scenario is that even if you have affected purchase/sale of such penny stock companies by way of cheque, entered in to your demat account and transaction being subject to STT still it shall not be recognized as LTCG. However, this subject to appeal with remote chances to win.

**SECTION 197A OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE -
NON-DEDUCTION IN CERTAIN CASES - SIMPLIFICATION OF PROCEDURE FOR FORM
NO.15G & 15H**

NOTIFICATION NO.4/2015 [F.NO:DGIT(S)/CPC(TDS)/DCIT/15H/2015-16/14425-556, DATED 1-12-2015

Section 197A of the Income tax Act provides for no deduction in certain case by submitting a declaration using Form 15G/15H as laid down in Rule 29C of the Income tax Rules. The manner of filing such declaration and the particulars have been laid down in Rule 29C of the Income tax Rules. The person responsible for paying any income of the nature referred to in sub section (1) or sub section (1A) or sub section (1C) of section 197A (hereinafter called "payer") shall enable the payee to furnish the declaration in electronic form after due verification through an electronic process. The declarant shall mandatorily quote his/her PAN in the declaration form 15G/H in accordance with the provisions of section 206AA(2).

A unique identification number shall be allotted to declaration (paper /electronic). The payer shall digitize the paper declaration and upload all declarations (including electronic declaration and digitized declaration) received during a particular quarter at departmental site (www.incometaxindiaefiling.gov.in) on quarterly basis. Further, clause 5 of rule 29C provides that the payer shall also furnish transactions covered under 15G/15H declarations in quarterly TDS statement in accordance with the provisions of clause (vii) of sub rule (4) of rule 31A irrespective of the fact that no tax has been deducted in the said quarter.

In exercise of the powers delegated by the Central Board of Direct Taxes (Board) under sub para (7) of para 2 of Notification issued *vide* S.O. No.2663(E) dated 29th September 2015, the Principal Director General of Income-tax(Systems) hereby specifies the procedure, formats and standards in this regard as under:

1. Furnishing and verification of the electronic declaration:

Rule 29C enables the payer to receive electronic declaration after due verification through an electronic process. The payer shall be responsible for proper verification of the declarant through an electronic process and shall implement the verification process after due diligence to ensure non-repudiation of the declarant. The payer shall archive log of all electronic activities in the process of furnishing of electronic declaration and the payer shall be responsible to establish the identity and credentials of the declarant in case of any dispute. The declarant shall mandatorily quote his/her PAN in the declaration form 15G/H in accordance with the provisions of section 206AA(2).

2. Allotment of UIN (Unique Identification Number):

2.1 UIN shall consist of following three fields (a), (b) & (c):

(a) Sequence Number (10 alphanumeric for Form 15G/15H) given as follows;

15G

15H

10 alphanumeric characters starting with G followed by 9 digits)Eg. G0000000001)

10 alphanumeric characters starting with H followed by 09 digits)Eg. H00000000001)

- (b) Financial year for which declaration is being furnished
- (c) TAN of the payer

2.2 Paper declaration shall be digitized by the payer and the same shall bear sequence number out of the same "running sequence number(Field 'a' of UIN) series", as used for online submission.

2.3 UIN running sequence number series shall be reset to 1 in case of each TAN of the payer at the start of each F.Y.

3. Furnishing or making available the declaration to the income-tax authority:

3.1 The payer will upload, the 15G and 15H declarations (digitized/electronic) received during a quarter, on quarterly basis, in the given file format on the e-filing site (www.incometaxindiaefiling.gov.in).

3.2 In addition to the above, the payer shall quote "sequence number" (Field 'a' of UIN) in quarterly TDS statement against the transaction covered under 15G/H declaration in accordance with the provisions of clause (vii) of sub rule (4) of rule 31A irrespective of the fact that no tax has been deducted in the said quarter.

4. Reconciliation Mechanism:

4.1 The payer will be responsible for reconciliation of the allotted UINs vis-a vis reported UINs to the ITD through reporting in quarterly TDS statement as well as through upload of declarations on quarterly basis.

4.2 The payer shall file exceptional report for the following UINs: a) UINs not reported in TDS statements b) UINs not uploaded on ITD website. The format of the report will be made available at the departmental website separately.

■ ■

General Instructions for E Filing of First Appeal:

1. Fields marked with asterisk (*) are mandatory.
2. While entering the data in online form, please do not click BACK button in browser or press BACKSPACE button. You will be logged out.
3. All amounts are in Indian Rupees.
4. A calendar is provided for selecting the date field (format DD/MM/YYYY).
5. All greyed out fields are either auto-filled or non-editable.
6. It is a good practice to save your work frequently. Please use SAVE AS DRAFT option.
7. Attachments
 - (a) All the attachments together should not exceed 50 Mb.
 - (b) All the attachments should be in Pdf or Zip format only.
8. In Forms wherever information is captured in tables
 - (a) Adding new Row: Click ADD button to add a new row and enter values in the field provided.
 - (b) Deleting Row: Select the row to delete from the list and click DELETE ROW button.
9. Please enter only the value wherever the information is needed in percentile.
10. It is preferable to have JRE version 1.7 and above installed on your machine.
11. Please verify the Form, accompanying attachments/documents before you submit.

Notes :

1. The form of appeal, grounds of appeal and the form of verification appended thereto shall be signed by a person in accordance with the provisions of rule 45(2).
2. The memorandum of appeal, statement of facts and the grounds of appeal must be in duplicate and should be accompanied by a copy of the order appealed against and the notice of demand in original, if any.
3. Not to be filled in if the appeal relates to tax deducted under section 195(1).
4. If appeals are pending in relation to more than one assessment year, separate particulars in respect of each assessment year may be given.
5. The memorandum of appeal shall be accompanied by a fee of,-
 - (a) where the total income of the assessee as computed by the Assessing Officer in the case to which the appeal relates is one hundred thousand rupees or less, two hundred fifty rupees;
 - (b) where the total income of the assessee, computed as aforesaid, to which the appeal relates is more than one hundred thousand rupees but not more than two hundred thousand rupees, five hundred rupees;;
 - (c) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than two hundred thousand rupees, one thousand rupees.
6. The fee should be credited in a branch of the authorized bank or a branch of the State Bank of India or a branch of the Reserve Bank of India after obtaining a challan from the Assessing Officer and a copy of challan sent to the Commissioner of Income-tax (Appeals).

The CBDT has, *vide* press release dated 30th December, 2015, made filing of first appeals before the CIT (A) mandatory through electronic mode for persons who are required to file their returns of income electronically. This can be done through the portal www.incometaxindiaefiling.gov.in.

**SECTION 220 OF THE INCOME-TAX ACT, 1961 - COLLECTION AND RECOVERY OF TAX
- WHEN TAX PAYABLE AND WHEN ASSESSEE DEEMED IN DEFAULT - AMENDMENT
OF INSTRUCTION NO.1914, DATED 21-3-1996 TO PROVIDE FOR GUIDELINES FOR
STAY OF DEMAND AT FIRST APPEAL STAGE**

OFFICE MEMORANDUM [F.NO.404/72/93-ITCC], DATED 29-2-2016

Instruction No. 1914 dated 21-3-1996 contains guidelines issued by the Board regarding procedure to be followed for recovery of outstanding demand, including procedure for grant of stay of demand.

2. In part 'C' of the Instruction, it has been prescribed that a demand will be stayed only if there are valid reasons for doing so and that mere filing of an appeal against the assessment order will not be a sufficient reason to stay the recovery of demand. It has been further prescribed that while granting stay, the field officers may require the assessee to offer a suitable security (bank guarantee, etc.) and/or require the assessee to pay a reasonable amount in lump sum or in instalments.

3. It has been reported that the field authorities often insist on payment of a very high proportion of the disputed demand before granting stay of the balance demand. This often results in hardship for the taxpayers seeking stay of demand.

4. In order to streamline the process of grant of stay and standardize the quantum of lump sum payment required to be made by the assessee as a pre-condition for stay of demand disputed before CIT (A), the following modified guidelines are being issued in partial modification of Instruction No. 1914:
 - (A) In a case where the outstanding demand is disputed before CIT (A), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand, unless the case falls in the category discussed in para (B) hereunder.

 - (B) In a situation where,
 - (a) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount higher than 15% is warranted (e.g. in a case where addition on the same issue has been confirmed by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of Revenue or addition is based on credible evidence collected in a search or survey operation, etc.) or,

 - (b) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount lower than 15% is warranted (e.g. in a case where addition on the same issue has been deleted by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of the assessee, etc.), the assessing officer shall refer the matter to the administrative Pr. CIT/CIT, who after considering all relevant facts shall decide the quantum/proportion of demand to be paid by the assessee as lump sum payment for granting a stay of the balance demand.

 - (C) In a case where stay of demand is granted by the assessing officer on payment of 15% of the disputed demand and the assessee is still aggrieved, he may approach the jurisdictional

administrative Pr. CIT/CIT for a review of the decision of the assessing officer.

- (D) The assessing officer shall dispose of a stay petition within 2 weeks of filing of the petition. If a reference has been made to Pr. CIT/CIT under para 4 (B) above or a review petition has been filed by the assessee under para 4 (C) above, the same shall also be disposed of by the Pr. CIT/CIT within 2 weeks of the assessing officer making such reference or the assessee filing such review, as the case may be.
- (E) In granting stay, the Assessing Officer may impose such conditions as he may think fit. He may, inter alia,-
 - (i) require an undertaking from the assessee that he will cooperate in the early disposal of appeal failing which the stay order will be cancelled;
 - (ii) reserve the right to review the order passed after expiry of reasonable period (say 6 months) or if the assessee has not co-operated in the early disposal of appeal, or where a subsequent pronouncement by a higher appellate authority or court alters the above situations;
 - (iii) reserve the right to adjust refunds arising, if any, against the demand, to the extent of the amount required for granting stay and subject to the provisions of section 245.

5. These instructions/guidelines may be immediately brought to the notice of all officers working in your jurisdiction for proper compliance.

■ ■

F. No. 312/109/2015- OT
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
Room No. 281, Hotel Samrat Kautilya Marg,
Chanakya Puri New Delhi-110021
Telefax: 011-24101573

Mail- salil.mishra@nic.in

Office Memorandum

Sub: Issue of refunds-procedure to be followed in other cases where notice under Section 245 has been issued for ITRs processed in F. Y. 15-16- regarding

I am directed to refer to the Board O.M. of even number dated 14th January 2016 regarding issue of refunds up to Rs 5000/-, and refunds in cases where outstanding arrears are up to Rs 5000/-, without any adjustment of outstanding arrears.

2. In this regard, I am further directed to convey the decision of the Board that following procedure is to be adopted in other cases, which are not covered by the aforementioned relaxation, and where notice under Section 245 has been issued to the taxpayer:-

(a) In cases where the tax payer has contested the demand, CPC would issue a reminder to the jurisdictional Assessing Officers about the contention of the taxpayer, asking them to either confirm, or make appropriate changes, to the demand, within thirty days. In case no response is received from the jurisdictional Assessing Officer, within the stipulated period of thirty days, CPC would issue the refund without any adjustment. The responsibility of non-adjustment of refund against outstanding arrears, if any, would lie with the Assessing Officer.

(b) In cases where there is no response from the taxpayer, CPC would issue a reminder to the taxpayer, asking to either agree or disagree with the demand, and submit response on the e-filing portal, within thirty days. In case no response is received from the taxpayer, within the stipulated period of thirty days, CPC would adjust the demand, along with applicable interest u/s 220(2), against the refund due and issue the balance refund, if any, to the taxpayer.

3. In view of above, it is requested that all Assessing Officers in your region may kindly be directed to follow the aforementioned procedure in respect of pending refund cases, not covered by the earlier OM dated 14th January 2016.

4. This issues with the approval of Chairman, CBDT.

Yours faithfully

(Salil Mishra)

Director (OT&WT)

2nd Technical Session

SEA VIEW HALL

Date : 11/04/2016

Time : 3.00 pm to 5.00 pm

BIO-DATA

PERSONAL DETAILS:

1. NAME: SHAILESH CHIMANLAL DESAI
2. DATE OF BIRTH: 24.12.1953
3. OFFICE ADDRESS: 407, "SHAIL", OP. NAVRANGPURA TELE. EXCHANGE, NR. MADHUSUDAN HOUSE, OFF C. G. ROAD, ELLISBRIDGE, AHMEDABAD – 380 006.
4. RESIDENTIAL ADDRESS : 26, RACHNA SOCIETY, SATELLITE ROAD, AHMEDABAD – 380 051.
5. CONTACT DETAILS: PHONE : (O) 26430509 (R) 26745151
MOBILE: 9925203808
EMAIL: SHAILESHCDESAI26@GMAIL.COM

EDUCATION:

BACHELOR OF COMMERCE, FROM GUJARAT UNIVERSITY IN THE YEAR 1974.
BACHELOR OF LAWS, FROM GUJARAT UNIVERSITY IN THE YEAR 1977.
COMPLETED INTER C. A. EXAMINATION IN THE YEAR 1978.

PROFESSIONAL SERVICES FIRMS:

SHAILESH C. DESAI – INTERNAL AUDITORS & TAX CONSULTANTS –
PROPRIETOR

FIELD EXPERIENCE:

- I HAVE WORKED WITH M/s. MAHENDRA N. SHAH & Co., CHARTERED ACCOUNTANTS FOR 8 YEARS.
- STARTED INDEPENDENCE PRACTICE SINCE 1982 IN THE FIELD OF INCOME TAX VAT & ALLIED LAWS.

I HAVE BEEN DEALING WITH INCOME TAX MATTERS AND FINANCIAL PLANNING WITH REFERENCE TO PREVAILING TAX LAWS.

BOARD OF DIRECTORS:

INDEPENDENT DIRECTOR IN SHILP GRAVURES LTD – PUBLIC LIMITED COMPANY LISTED IN BSE

OTHER ACTIVITIES:

1. JOINED INCOME TAX BAR ASSOCIATION AS AN ACTIVE MEMBER SINCE 1985.
2. LIFE MEMBER OF ALL GUJARAT FEDERATION OF TAX CONSULTANTS AND THE GUJARAT SALES TAX BAR ASSOCIATION.
3. MEMBER OF THE MANAGING COMMITTEE OF INCOME TAX BAR ASSOCIATION IN THE YEAR 1996, 1997, 1999, 2001.
4. POST HELD IN THE INCOME TAX BAR ASSOCIATION
 - A) 1998. HON. TREASURER
 - B) 2000 JT. SECRETARY
 - C) 2002 VICE PRESIDENT
 - D) 2003 PRESIDENT
5. ALL GUJARAT FEDERATION OF TAX CONSULTANT
 - A) 2001-2002 HONORARY SECRETARY
 - B) 2002-2003 VICE PRESIDENT
 - C) 2012-2013 PRESIDENT
 - D) 2013-2014 ON WARDS MEMBER ADVISORY BOARD
6. FOUNDER DIRECTOR OF FEDERATION OF ENERGY CONSERVATIONIST IN THE YEAR 2003.
7. SPECIAL INVITEE MEMBER OF THE MANAGING COMMITTEE OF INCOME TAX BAR ASSOCIATION IN VARIOUS YEARS SINCE 2005.
8. MEMBER OF TAXATION COMMITTEE OF GUJARAT CHAMBER OF COMMERCE AND INDUSTRY IN THE YEAR 2002-2003, 2009-2010 2012-2013 AND 2014-2015.
9. MEMBER OF MANAGING COMMITTEE OF ALL GUJARAT FEDERATION OF TAX CONSULTANTS IN YEAR 2009-2010 AND 2015-2016.
10. ACTIVELY ENGAGED IN VARIOUS SOCIAL ORGANIZATION AND INDUSTRIES.
11. TRUSTEE OF BRAIN TRUST IN IT BAR ASSOCIATION RRC 2009-2010 AND 2010-2011.
12. CHAIRMAN, CO CHAIRMAN AND MEMBER OF SUBCOMMITTEE INCOME TAX BAR ASSOCIATION AND ALL GUJARAT FEDERATION OF TAX CONSULTANTS

NON RESIDENT INDIAN AND INCOME TAX IN INDIA

By Shailesh Desai

The selection of subject is mainly to understand the Provisions relating to Taxation of Non Resident under the Provisions of Indian Income Tax Act, 1961. The paper contain mainly, Residential Status, Income liable to Tax, Exempted Income, Income liable to Tax on concession Rate of Tax, Provisions relating to TDS mainly on Immovable Property Transaction etc which is applicable to **NON RESIDENT INDIAN (NRI)**.

- 1) It is important to understand the various terminology used in connection with the Non Resident Indian mainly are as under.

A) Non Resident Indian (NRI)

The above term is known to us and used by us frequently for our relatives, friends residing outside India.

The terms NRI include the Non Resident Indian holding Indian Passport, as well as the Indian Origin holding Foreign Citizenship (Passport) refers to as person of Indian Origin.

B) Person of Indian Origin (PIO)

A person holding Citizenship of any Country (Except Bangladesh or Pakistan) was holding at any time Indian Passport or any of its Parents or Grand Parents were Citizen of India or is a spouse of any Indian Citizen, is treated as person of Indian Origin.

C) Overseas Citizen of India (OCI)

The Government of India at present is granting to NRI'S an OCI status (Overseas Citizen of India) registration popularly known as "Dual Citizenship". Previously the Government of India was issuing **PIO Card** and the same have been re place by **OCI Card**.

A Foreign National who was eligible to become or was an Indian Citizen, on or after 26-01-1950 or belonged to a territory that became part of India after 15-08-1947, his/her children and grandchildren (including minors) are eligible for registration as an OCI.

The Person is or was a Citizen of Pakistan or Bangladesh is not entitle for OCI.

The above terminologies are used and applicable mainly to the Non Resident Indian.

D) NON-RESIDENT UNDER FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

In view of Sec.2(v) and 2(w) of FEMA, a person who has gone out of India or stays outside India for taking up employment or carrying a business or vocation or for any other purpose, which indicates his intention to stay outside India for an uncertain period, is treated as a Not-Resident.

Even Students going abroad for pursuing further studies have been granted the status of a Non-Resident by the Reserve Bank of India (RBI).

TEST OF RESIDENCE BASED ON INTENTION & NOT ON PHYSICAL STAY

When such a person who is a Non-Resident, comes to or stays in India, but does not take up any employment or carry on any business or vocation in India or his circumstances do not indicate his intention to stay in India for an uncertain period, he would still continue to be treated as a Non-Resident.

Thus, the test of residence under FEMA is based not on the physical stay of the person in India, but on his intention on the criteria as explained herein above.

2) RESIDENTIAL STATUS UNDER INCOME TAX ACT, 1961

To determine the Residential Status the Provisions are contain in Section 6 of the Income Tax Act, 1961, the said section determine the status of an Individual (it also covers HUF and other entity)

however we are dealing here with the **status of Non Resident Individual.**

2.1) According to the section -6 which is a governing section decide the Residential Status for Tax purposes of an Individual. Here we discuss the NON RESIDENT (NR) an Individual who satisfy the following condition together, **be considered as Non Resident.**

- a) He is in India during the relevant Financial Year for a Period of **Less than 182 Days** and
- b) He is in India for a period of less than **60 days during the relevant Financial Year and less than 365 days** during 4 years immediately preceding the Financial Year.

If an Individual is Not a Non-Resident during a particular year, his status to tax purposes is treated as a **Resident. (R)**

Under the explanation to the Section 6 (1) of the Income-tax Act, the residential status of an individual who is rendering service outside India and who visits India during leave or vacation in any previous year or an individual who is outside India and who comes on a visit to India in any previous year will be determined on the basis of their stay in India and if it is less than 182 Days in a particular Financial Year he will be treated as Non Resident for that Financial Year and his Foreign Income would not attract Tax Liability.

2.2) Not Ordinary Resident in INDIA

An Individual will be treated as "Not Ordinary Resident" in India in any previous year if he has been a Non- Resident in India

- a) If he is a Non-Resident 9 out of 10 Previous Year preceding that Year.

OR

- b) Has during the 7 Previous Year preceding that Year being in India for a period of, or Period amounting in all to, 729 Days or less.

3) SCOPE OF INCOME LIABLE TO TAX IN INDIA

The individual is liable to pay Tax on Income depending up on the Residential status of that Individual. The income is liable to Tax in India as under.

- 1) Non –Residents are liable in respect of income received or deemed to be received in India or which accrues or arises or is deemed to accrue or arise in India. They are not at all liable in respect of income accruing or arising outside India even it is remitted to India.
- 2) The liability of the persons who are resident but not ordinarily resident is the same as in the case of persons who are resident and ordinarily resident except that the income which accrues or arises outside India is not includible in their total income unless it is derived from a business controlled in or a profession set up in India [Proviso to section 5(1)].
- 3) Irrespective of residential status, all income accruing or arising, whether directly or indirectly, through or from: (a) any business connection in India; or (b) any property in India; or (C) any asset or source of income in India; or (d) the transfer of a capital asset situate in India, shall be deemed to accrue or arise in India and chargeable to tax in India [Section 9(1)(i)]

4) TAX EXEMPTIONS FOR NRI'S UNDER THE INCOME TAX ACT

The Non-Resident are entitle to certain exemption of Income as under.

Section	Income entitled to Exemption
Section 10(4)(i)&(ii)	Interest on Securities or Bonds as notified by the Central Government. Interest on NRE Account
Section 10(15)(iv)(fa)	Interest on FCNR Deposits and RFC Deposits paid to NRI or R But NOR
Section 10(34)	Income from Dividend from Domestic Companies
Section 10(35)	Income from Units of Mutual Funds specified u/s. 10(23D) or units from UTI
Section 10(38)	Long Term Capital Gains on STT paid Shares or Securities
Section 115F	Long Term Capital Gain on transfer of 'Foreign Exchange Assets', if Net Consideration is reinvested within 6 months in any other 'Specified Asset'

5) SPECIAL PROVISIONS RELATING TO CERTAIN INCOME OF NON-RESIDENT INDIAN CITIZEN AND FOREIGN NATIONALS OF INDIAN ORIGIN – UNDER CHAPTER XII-A (Section 115C to 115I)

6)

Section	Income entitled to Exemption
Section 115-C	Section deals with certain definition relating to Convertible Foreign Exchange, Foreign Exchange Asset, Investment Income, Long Term Capital Gains, Non-Resident Indian, Specified Asset
Section 115-D	Special Provision for Computation of Total Income of Non- Resident. where no deduction in respect of any expenditure or allowance under any provision of this act
Section 115-E	a) Any income from investment or income from long-term capital gains of an asset other than a specified asset; the income is chargeable @ 20% b) Income by way of long-term capital gains income chargeable @ 10% The total amount of Income-tax chargeable on total income, the income referred to in clause (a) & (b) be reduced
Section 115-F	Long Term Capital Gain on transfer of 'Foreign Exchange Assets', if Net Consideration is reinvested within 6 months in any other 'Specified Asset' according to condition let down in Section

Section 115-G	<p>Return of income not to be filed in certain cases.</p> <p>The Non-Resident not require to file his/her return of income u/s. 139(1) provided his/her total income in respect of which he/she is assessable under this Act consist only of Investment income or income by way of Long-term capital gain or both and the deduction of tax at source have been made under the provision of chapter XVII – (b)</p>
Section 115-H	<p>Benefit under chapter to be available in certain cases even after assessee becomes resident.</p> <p>When Non-Resident Indian in any previous year become Resident in India in any subsequent year may furnish declaration to the A.O along with his return of income u/s. 139 about the applicability of provision of this chapter shall continue to apply in relation to the income derived from foreign exchange asset till the asset is transfer or conversion in to money of such asset</p>
Section 115-I	<p>Chapter not to apply if the assessee so chooses.</p> <p>A Non- Resident Indian may elect not to be governed by the provisions of this chapter for any assessment year by furnishing the declaration and his total income shall be computed for that assessment year according with the other provisions of this Act.</p>

7) Provisions of TDS on Sale of Immovable Property

The Provision relating to the Tax Deducted at Source particularly out of the income of Non-Resident governed by section 195 of the Income tax Act, 1961, the said provisions apply to all category of Non-Resident.

Here we will discuss only Provisions of TDS relating to the Sale of Immovable Property by the Non- Resident Indian to the Indian Resident under section 195 of the Income –Tax Act, 1961. The provisions regarding TDS to be deducted by the Purchaser of Property, Provisions relating to TDS on Sale of Immovable Property by Non-Resident explained as under.

Sr. No.	Section 195
1	The TDS to be deducted on the entire consideration of what so ever amount. Deduction to be made on Gross Value of Property.
2	The section applies w.e.f. 01-04-1961
3	For Property Sale the Rate of TDS 20%+EC+SHEC+10% Surcharge if consideration is above 1 corer.
4	Section apply to Non-Resident and NRI
5	TAN No Required to deduct Tax.
6	Challan for Payment of TDS in Form 281and TDS Certificate be issued in Form No-16A to NRI sealer within 15 Days of due date of TDS return for the Quarter.
7	Return for TDS required to be filed Quarterly i.e. for TDS deducted for the Quarter. If the payment is made in installment in the Quarter applicable.
8	Lower rate of TDS Certificate available either by Application made by Purchaser of the Property or by the NRI, only there after deduction be made at a lower rate on Gross Value of Consideration till the Certificate in force.
9	PAN No. is not mandatory since the deduction is 20% however it is advisable to obtain the same to file the return of income and get the credit of TDS and also get the refund. It is mandatory also to have PAN No. to get the Sale Deed Registered.

10	TDS to be deducted at the time of Payment If the payment are made in installment then from each installment.
11	NRI has to file return of income to claim the refund of TDS if any.
12	If the Buyer fails to deduct TDS or deduct short or fails to deposit TDS under section 195, then buyer will be declared as Assessee in Default as per section 201 of Income Tax Act. All the tax dues including interest and penalty will be recovered from buyer by the income tax department. A buyer cannot claim ignorance of TDS provisions under section 195 while buying a property from NRI. There are other Penalty clauses under section 272 and 271 of the Income tax Act, 1961 and also Department can take action against buyer under section 222 and 226 of the Income tax Act, 1961

8) LIABILITY OF WEALTH TAX IN CASE OF NRI'S

The Wealth Tax Act had been repealed and the Wealth Tax returns are not required to file for the Financial Year 31-03-2016 and subsequent years.

The Residential Status under the Income tax Act, 1961 was relevant and not the Citizenship of the NRI. However in the case of Wealth Tax, the Residential Status as well as the Citizenship of the Individual determining the Wealth Tax liability.

9) BANK ACCOUNTS OF NRI

a) Non – Resident (External) Account – NRE

This is a Rupee denominated Account opened by remittance of any convertible foreign exchange. The Account can be maintained as a savings or fixed deposit account.

b) Non-Resident (Ordinary) Account – NRO

This is a Rupee denominated Account, which is similar to an Ordinary Savings Bank Account of a Resident. Upon becoming a Non-Resident, the NRI must advise the bank to designate his Resident Savings Account as NRO Account. On return to India

for settlement, such NRI should re-designate it as a Resident Savings Account.

The Interest income credited in such NRO Account is liable to deduct TDS @ 30% by the Bank and it is taxable income in the hands of NRI. To avoid Tax liability by NRI in such Account he can transfer the Fund to NRE Account subject to the Rules & Regulation of the Reserve Bank of India.

c) Foreign Currency Non-Resident Account-FCNR

NRIs can open FCNR Accounts in Foreign Currencies such as US Dollars, Sterling Pounds, Japanese Yen, Euro, Canadian Dollars and Australian Dollars or any other currency.

The above information is provided for the sake of knowledge however each account having their own features and operational system. The details can be available with the bank as the rules and regulations are changing on and off.

- 10) I draw your attention to the recent development regarding the disclosure of Foreign income and Wealth outside the U.S.A. declared by the US citizen, Green Card Holder and the person filing IRS returns in U. S. A. The provisions of Foreign Asset Transaction Compliance Act applicable to all person as above and the disclosure of income is now mandatory. The Asset situated outside U.S.A. is required to be disclosed if it exceeds 10000 USD. At present the Financial assets i.e. Bank balances, investment in shares, mutual funds, securities, surrender value of insurance policy/ policies, cash and any other financial assets. At present loan given, vehicles etc. are not covered and the Immovable Property and Jewellery are not covered in such disclosure. Thus if the bank account / accounts are jointly held, or the assessee held power of attorney, closed bank accounts etc. will be required to be disclosed.

The value for disclosure will be as on 31st December every year.

BIO - DATA

SHAIVAL UPENDRA BHATT

QUALIFICATION : M.COM LL.M ADVOCATE

D.F.M [DIPLOMA IN FINANCIAL
MANAGEMENT][Secured 2nd Rank in Secondary Board Exam
in Std. 10th and 1st Rank in the School]

PROFESSIONAL

EXPERIENCE

: Associated with "BHATT & CO", the Family Law Firm (Established Before 70 years), since 1994 and is Third Generation in the Family Profession of Lawyers. Initially had practiced Income-Tax Law and diversified into Non Litigation Practice of Conveyancing and Title Clearance and Land Matters and also dealing in Documentation Work of private and Mutinational Companies.

Providing Advisory services and on Panel of 27 Leading Multinational, National, Private Banks, Housing Finance Companies and Non Banking Financial Corporations.

Legal Advisor to Leading Developers of the State doing Non Litigation Work and Arbitration.

SOCIAL

ACTIVITIES

: Rendered Services as Visiting Faculty for 10 years at H.L.I.C [Now AES University]

Also visiting faculty to H.L.BBA and H.L.C.C

HOBBIES

: Music, Adventure Sports

SOME POSERS RELATING TO IMMOVABLE PROPERTY

Shaival Bhatt
Advocate

- Q.1 What is the provision regarding registration of Will for immovable property before the office of Sub Registrar ?

- Q.2 What is provision regarding Power of Attorney in case of Relative and Non Relative ?

- Q.3 Can a Private Limited or Public Limited Company purchase / acquire on Lease an agricultural Land in State of Gujarat and can do agricultural activity on such land ?

- Q.4 What is the provision regarding the payment of Sale Consideration in cash after 01/06/2015 ?

Q.5 What is the provision of TDS on Immovable property kindly explain the procedural aspect ?

Q.6 What is the provision regarding the List of Legal Heirs (Pedhinamu) ?

Q.7 There is an immovable property in the name of firm having two partners. Can the prospective buyer be the partner in the firm and the existing partner retire from the firm whereby the property is transferred in favour of the Newly admitted partner, what is the impact of stamp duty in such case ?

Q.8 Impact of stamp duty on conversion of a Private Limited Company to LLP.

Q.9 Release deed in case of ancestral property whether the stamp duty is applicable after May, 2014.

Q.10 What is the validity of Stamp paper/E-stamp or Franking. If unutilized then, what is the procedure for seeking refund ?

Q.11 Whether probate is required to be obtained in the state of Gujarat ?

Q.12 In case merger / acquisition of a Private or Public Limited Company what is the implication of stamp duty.

Q.13 What is Transfer with regard to immovable property.

- As per Transfer of Property Act
- As per section 2(47) of I T Act
- Value as per sale consideration and Sec. 50C
- Sec. 56(2) of the Income Tax Act.
- Sec. 43CA of the Income Tax Act.
- Power to reduce the Value as applicable for Stamp Duty Valuation

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