



RRC of EIRC at Hyderabad – 3 Presentation Topics

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June 5, 2026

Topics covered

1. S. 115BBE – voluntary compliance through Updated Return
2. Provisions for common order of assessment and penalty
3. Retrospective Amendments carried out by Finance Act, 2026

S. 115BBE – voluntary compliance through Updated Return

Background / Overview

Overview of section 115BBE

- Section 115BBE of the Income-tax Act, 1961, is a powerful provision. It was introduced to deter the generation and concealment of black money by imposing a significantly higher tax rate on unexplained income.
- Effective AY 2017-18, for the assessee, it offers a pathway to regularize undisclosed income, albeit at a steep cost. For the Revenue, it's a potent tool to tax such income effectively.
- But like any powerful sword, it cuts both ways. While it provides an opportunity for compliance, a misstep in its application or interpretation can lead to severe adverse consequences, even when an assessee genuinely attempts to come clean. This is particularly true when we consider self-declaration, whether voluntarily or in response to departmental actions, and now, through the updated return mechanism.

Section 115BBE

Overview of section 115BBE

- Section 115BBE provides for a rate of tax where total income includes income referred to in sections 68 to 69D.
- Sections 68 to 69D of the 1961 Act and corresponding provisions viz. sections 102 to 106 of the 2025 Act are hereinafter referred to as Specified Sections.
- Section 115BBE will operate if and only if income referred to in Specified Sections is included in total income and not otherwise.
- The total income may include income referred to in sections 68 to 69D irrespective of the fact that the assessee has included the same in the return of income or the assessing officer while assessing the total income taxes particular amounts under this section – either by way of addition to returned total income or by way of reclassification of amounts returned.

Overview of section 115BBE

- Rate of tax –
 - from AY 2013-14 to 2016-17 : 30% with a normal surcharge and cess
 - from AY 2017-18 : 60% plus 25% surcharge plus cess
- Corresponding provision in 2025 Act is section 195
- Tax rate provided in section 195 is 30% plus surcharge of 25% plus cess of 4%
- Section 115BBE(2) is non-obstante anything contained in the 1961 Act and provides that no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing his income referred to in sections 68 to 69D
- In addition, to the tax applicable at the higher rate, section 271AAC of the 1961 Act provides for a sort of mandatory penalty of 10% of the tax referred to section 115BBE i.e. a penalty of 6%

Overview of section 115BBE

- Therefore, upon an addition being made under sections 68 to 69D, assessee becomes liable to pay tax and penalty of 84% [60% tax + 25% surcharge + 4% cess + 6% towards penalty].
- In addition, assessee will also be liable to pay interest under section 234B and 234A (in cases where return of income was filed beyond due date)
- Section 271AAC provides that penalty under this section shall not be levied upon satisfaction of the following twin conditions –
 - assessee has included the said income in the return of income; and
 - the entire tax on such income has been paid before 31st March of the previous year
- Provisions of section 195 of the 2025 Act are similar to the provisions of section 115BBE except that the rate of tax has been reduced from 60% to 30%. Surcharge and cess continue to be the same as under 1961 Act.

Overview of section 115BBE

- Section 195(2) is similar to section 115BBE(2) and prohibits deduction of any expenditure or allowance or set off of any loss in computing income referred to in Specified Sections.
- Under 2025 Act, there is no provision which corresponds to provisions of section 271AAC of the 1961 Act.
- However, section 439 (corresponding to section 270A of the 1961 Act) provides that an addition under any of the Specified Sections will constitute an event which will qualify as misreporting of income.
- Section 440 (corresponding to section 270AA of the 1961 Act) has been amended and now provides for grant of immunity / waiver even in cases where under-reporting is in consequence of misreporting thereof.

Overview of section 115BBE

- One of the conditions to qualify for immunity / waiver where there has been misreporting due to addition under one or more of the Specified Sections is that the assessee is required to pay in lieu of penalty an amount equivalent to 120% of the amount of tax payable on under-reported income by way of additional tax.
- If a person chooses not to opt for waiver under section 440, then penalty under section 439 is 200% of the amount of tax payable on under-reported income.
- Therefore, **apart from interest** under section 234B and 234A (corresponding sections under 2025 Act being sections 423 and 424), the total outflow on account of an addition under Specified Sections is –
 - 84% for AY 2017-18 to 2026-27
 - 117% for TY 2026-27 onwards (39% for tax and 78% for penalty)
 - If for TY 2026-27 onwards, a person opts for waiver of penalty then the outflow works out to 85.80% (39% plus 120% of 39% towards additional tax)

Overview of section 115BBE

- One may debate as to whether considering the jurisdictional conditions required to be satisfied before an amount can be taxed under Specified Sections whether, in law, it is possible for an assessee to voluntarily declare an amount under these sections.
- One may also like to keep in mind the propositions laid down by judicial precedents as to jurisdictional conditions required to be satisfied before taxing an amount under any of the Specified Sections as also the language of section 115BBE of the 1961 Act / 195 of the 2025 Act.

Some of the relevant judicial precedents

Specific Invocation by AO is Crucial

- For Section 115BBE to apply, the Assessing Officer (AO) must **specifically invoke and establish** the applicability of Sections 68 to 69D (unexplained cash credits, investments, money, expenditure, etc.). Mere acceptance of income as 'business income' by the AO, without invoking these deeming provisions, precludes the application of Section 115BBE. The burden is on the AO to prove that the income falls under these specific deeming provisions.
 - **ACIT vs. Syed Zeeshanuddin (MANU/IH/0158/2024)**: Held that 115BBE is not applicable to income declared as 'business income' unless the AO specifically invokes and establishes Sections 68-69D.
 - **Rajesh Badri Pd. Modi vs. ACIT (MANU/AN/0002/2025)**: Ruled that a mere re-characterization of disclosed business income by the AO, without substantiating it with *actual additions* under Sections 68-69D, does not warrant 115BBE.
 - **Bajaj Sons Ltd. vs. The DCIT (MANU/IG/0056/2021)**: Emphasized that 115BBE is not attracted where income is surrendered to cover potential accounting discrepancies in business income, and no specific unexplained items under Sections 68-69D are identified by the AO.

Voluntary Offer and Clarification

- If an assessee voluntarily offers income, even initially under a general head like 'income from other sources', and subsequently clarifies its true nature with supporting evidence, the AO cannot simply re-characterize it under Sections 69A/69C to apply 115BBE. The income must be "determined by the Assessing Officer" under these sections, implying a distinct addition, not just a re-labeling.
 - **Mahesh Chand Singhal vs. The A.C.I.T. (MANU/ID/0150/2024)**: Stated that the AO cannot recharacterize voluntarily offered income if the assessee has subsequently clarified its nature.
 - **Kimati Lal Jain (ITAT Chandigarh)**: Excess stock found during commercial operations cannot be isolated as an independent unexplained asset under Section 69B if it forms part of regular business turnover.
 - **Bajargan Traders (Rajasthan High Court)**: Unexplained business stock is a commercial asset, not a personal investment; hence out of the purview of Section 115BBE.

Stock-in-Trade / Business-Related Cash:

- If the undisclosed income or cash is demonstrably linked to the assessee's regular business operations (e.g., excess stock-in-trade, cash sales, cash from business activity), it retains its character as business income and cannot be automatically treated as unexplained money/investment under Sections 69/69A/69C to attract 115BBE.
 - **Vidya Sagar Narinder Kumar vs. The ITO (MANU/IG/0019/2025)**: Held that 'stock-in-trade' identified during a survey retains its character as business income and is not subject to 115BBE.
 - **S.G. and Co. vs. ACIT (MANU/IP/0286/2025)**: Ruled that excess cash found at business premises, demonstrably linked to the sole business activity and accounted for, must be assessed as normal business income, not unexplained money under Section 69A.

Updated Return : Section 139(8A) in 1961 Act Section 263(6) in 2025 Act

Overview of section 115BBE

- **Key aspects of Section 139(8A) relevant to our discussion:**
 - It allows for the declaration of additional income.
 - It requires payment of additional tax [25% or 50% or 60% or 70% of aggregate tax and interest depending upon the time gap in filing the Updated Return] over and above the regular tax and interest.
 - It cannot be used to reduce income or increase losses.
 - It cannot be filed if a search, survey, or prosecution proceeding has been initiated against the assessee.
 - As a result of filing of Updated Return, neither can claim of refund be made if a refund was not due in return filed under section 139(1) or 139(4) or 139(5) nor can the claim of refund if made in such a return be increased.
- The intersection of Section 115BBE and Section 139(8A) is where many of the "fine issues" arise.

Section 139(8A) of the 1961 Act

- Upon declaration of an income in an Updated Return under section 139(8A) of the 1961 Act, apart from other conditions being satisfied, an assessee is required to pay, by way of additional tax as follows –

Section 139(8A) of the 1961 Act

If such return is furnished	% mentioned in this column of aggregate of tax and interest payable
After expiry of time available under section 139(4) or 139(5) and before completion of the period of 12 months from end of relevant AY	25
After expiry of 12 months from the end of relevant AY but before completion of period of 24 months from the end of relevant AY	50
After expiry of 24 months from the end of relevant AY but before completion of period of 36 months from the end of relevant AY	60
After expiry of 36 months from the end of relevant AY but before completion of period of 48 months from the end of relevant AY	70

Section 139(8A) of the 1961 Act

- Even assuming that the Updated Return of Income is filed within 12 months, the additional outflow by way of tax (including additional tax works out to 97.50% plus 25% of additional interest.
- Therefore, for and upto AY 2026-27 it does not make any economic sense to update the return of income and offer income referred to in Specified Sections under such Updated Return except where an assessee feels that the nature of income being declared is such that it can pass the muster of being charged under the head 'Profits & Gains of Business or Profession' in which case the economic impact would be different. However, one may like to keep in mind the implications, if any, of such a declaration under other statutes.

Section 139(8A) of the 1961 Act

- If a view is taken that upon taxing income under Specified Sections, proceedings for prosecution will be initiated and also that if income is declared under Updated Return then there is no risk of prosecution being initiated then one may consider the additional amounts being paid as compounding charges for mitigating the risk of prosecution.
- If a person is other than a company and is aged more than 70 years at the time of commission of offence then prosecution cannot be initiated against such a person.

Section 139(8A) of the 1961 Act

- Under 2025 Act since the rate of tax is 30% instead of 60%, in certain cases it may make economic sense in updating the return of income for including therein income referred to in Specified Sections.
- Upon filing an Updated Return under section 263(6), additional tax is required to be paid under section 267. The quantum of additional tax to be paid under section 267 is the same as it is under section 140B of the 1961 Act.
- Upon, seeking a waiver of penalty under section 440, an assessee will be liable to pay by way of additional tax, in lieu of penalty, a sum equivalent to 120% of tax on under-reported income (if under-reported income is because of addition made under Specified Sections). Therefore, the amount of additional tax will work out to 46.8% [120% of 39%].
- Total impact of an addition under Specified Sections, in a case where waiver is sought will be 85.8% [39% + 46.8%].
- If waiver is not sought impact is 117% [39% + 78%]

Section 139(8A) of the 1961 Act

- The impact of filing an updated return is 25% of tax plus interest i.e. 9.75% + 25% of incremental interest which if the delay is of 12 months, interest will be 4.68% and 25% thereof will be 1.17%. Therefore, the total impact would be 10.92% [9.75% + 1.17%] which is far more economical than paying 46.8%.
- If the delay in filing updated return is of 24 months then the impact will be of filing an updated return is 50% of tax plus interest i.e. 19.50% + 25% of incremental interest which if the delay is of 24 months, interest will be 9.36% and 50% thereof will be 4.68%. Therefore, the total impact would be 24.18% [19.50% + 4.68%] which again is far more economical than paying 46.8%.
- If the delay in filing updated return is of 36 months then the impact will be of filing an updated return is 60% of tax plus interest i.e. 23.40% + 25% of incremental interest which if the delay is of 36 months, interest will be 14.04% and 50% thereof will be 7.02%. Therefore, the total impact would be 30.42% [23.40% + 7.02%] which once again is far more economical than paying 46.8%.

Section 139(8A) of the 1961 Act

- If the delay in filing updated return is of 48 months then the impact will be of filing an updated return is 70% of tax plus interest i.e. 27.30% + 70% of incremental interest which if the delay is of 48 months, interest will be 18.72% and 70% thereof will be 13.104%. Therefore, the total impact would be 40.404% [27.30% + 13.104%] which once again is far more economical than paying 46.8%.
- Therefore, the decision will now rest on whether filing an Updated Return will attract prosecution and non-tax consideration as to consequences under other enactments such as GST, Benami, etc. If the quantum of income declared in Updated Return under Specified Sections is very large, one cannot rule out an investigation by ED as regards the source of funds.

Prosecution qua income declared in Updated Return

Section 139(8A) of the 1961 Act

- Since 140B requires payment of additional tax even on the amount of interest computed under sections 234A, 234B and 234C, it appears that the legislative intent is that the amount declared in Updated Return replaces the amount in the original return of income and therefore it mandates levy of interest under section 234A, 234B and 234C and that too with a top up depending upon the delay in filing an Updated Return.
- Upon comparison of filing an Updated Return as compared to a Revised Return, one would feel that an Updated Return stands on a better footing because the the updated return framework (ITR-U) was explicitly legislated to encourage voluntary compliance and reduce litigation and would provide much stronger institutional and statutory protections against **Section 277** prosecution.
- The Memorandum to the Finance Act explicitly states that if a taxpayer files an updated return, they **cannot be prosecuted under Section 276CC** for a wilful failure to file the original return. This has been incorporated in section 276CC of the 1961 Act.

Section 139(8A) of the 1961 Act

- For Section 277 (false verification/statements in the original return), the filing of an updated return impacts a prosecution in two distinct ways depending on the timeline:
- **Scenario A: The Update is Truly Voluntary (No Prior Detection)**
- If the updated return is filed before the Income Tax Department issues a notice, launches a search, or initiates a survey, **prosecution under Section 277 is highly unlikely to stand**
- **Negation of Mens Rea:** By paying the steep financial penalty under Section 140B (the additional tax), the taxpayer settles the revenue gap voluntarily. Courts are likely to view this voluntary disclosure as robust evidence that there was no continuing intent to defraud or evade, rendering a Section 277 trial unsustainable.
- **The "Trust-Based" System Policy:** The ultimate goal of ITR-U is a trust-based compliance system. Initiating criminal prosecution after a taxpayer voluntarily rectifies an error and pays a penalty defeats the statutory purpose of the provision.

Section 139(8A) of the 1961 Act

- **Scenario B: The Update is Used to Cover Up an Ongoing Investigation**
- Section 139(8A) explicitly bars a taxpayer from filing an updated return if a search has been initiated, a survey has been conducted, or books of accounts have been seized.
- **Abuse of the Provision:** If a taxpayer files an updated return *after* realizing the department has detected their fraud (or if they use the updated return to make **new, bogus deduction claims** to offset other income), **Section 277 prosecution will proceed.**
- **The Cold Fact:** Unlike historical amnesty schemes (VDIS, IDS), Section 139(8A) **does not contain an immunity clause** from prosecution or penal code consequences. A self-declaration is an explicit, signed confession of historical tax evasion. If the AO proves *mens rea* prior to the ITR-U filing, prosecution can legally be initiated.

Section 139(8A) of the 1961 Act

- **Summary**
- Filing an updated return and paying additional tax under Section 140B acts as a functional "settlement" with the exchequer. Unless the department has already initiated an investigation or audit prior to the update, or the updated return itself contains freshly fabricated claims, a prosecution under Section 277 for a false verification in the original return is **effectively preempted or neutralized.**

Prosecution qua Revised Return

Section 139(8A) of the 1961 Act

- Filing a revised return under **Section 139(5)** of the Income-tax Act, 1961, does not automatically erase or condone a false statement or false verification made in the original return under **Section 139(1)**.
- Judicial precedents on **Section 277** prosecutions outline two conflicting positions based on the taxpayer's *intent* (bona fide mistake versus deliberate concealment).

Section 139(8A) of the 1961 Act

- **1. The Strict Approach: Criminal Offence is Complete Upon Original Filing**
- Many courts hold that an offense under Section 277 is fully committed the moment the false original return is verified and submitted. A subsequent revised return cannot undo the completed crime if the initial act was fraudulent.
- **S.R. Arulprakasam v. Smt. Prema Malinivasan (Madras High Court):** The Court explicitly held that submitting a revised tax return **does not absolve** taxpayers from criminal liability for the original fraudulent filing. If the original return contained a deliberate fabrication of documents and false verification, filing a revised return does not wipe out the offence.
- **G.S.R. Krishnamurthi v. CIT:** The court ruled that the discovery of a theft or fraud by the department prior to the filing of the revised return negates any immunity. A revised return cannot be used as a shield to escape prosecution if it was filed only because the tax evasion was caught.

Section 139(8A) of the 1961 Act

- **2. The Liberal Approach: Revision as Evidence of a "Bona Fide" Mistake**
- For a prosecution under Section 277 to succeed, the prosecution must establish *mens rea* (a guilty mind). If a taxpayer discovers an inadvertent error and corrects it voluntarily, courts use the revised return as proof that the original error lacked fraudulent intent.
- **K.E. Sunil Babu, Assistant Commissioner of Income Tax v. Steel Processors (Karnataka High Court):** The Court held that filing a revised return under Section 139(5) signals a **bona fide mistake**, not a wilful attempt to evade tax. When tax authorities accept the revised return and conclude there was no active concealment, the *mens rea* required for Section 277 vanishes, making prosecution untenable.
- **Prem Dass v. ITO (Supreme Court):** The Apex Court emphasized that the department must conclusively prove that the taxpayer **knew or believed the statement to be false** at the time of filing. If the revision happened due to negligence or standard omission, Section 277 cannot be invoked.

Prosecution : relevant judicial precedents

Section 139(8A) of the 1961 Act

- **S.R. Arulprakasam v. ITO [1987] 163 ITR 487 (Madras)**
- *The Madras High Court in CIT v. Ramdas Pharmacy [1970] 77 ITR 276 has held that the mere fact that the assessee has filed a revised return after concealment has been detected by the ITO will not wipe out the contumacious conduct on the part of the assessee in filing the original return, which if it has been accepted would have resulted in avoidance of tax. Thus, **filing of revised return will not likewise be a bar to the launching of criminal prosecution**. It cannot, therefore, be said that the original return is completely wiped out and no prosecution can be instituted on the basis of the original return.*
- *In the original return submitted by the petitioner, he had given a false return of income at Rs. 1,03,740 while the real income had finally been adjudicated upon by the Tribunal at Rs. 2,34,233. In the profit and loss account submitted along with the original return, the collections had been falsely given at Rs. 14,89,681 which was less than by more than a lakh of rupees than the real collection as disclosed by the revised return.*

Section 139(8A) of the 1961 Act

■ S.R. Arulprakasam v. ITO [1987] 163 ITR 487 (Madras)

- *The petitioner had made a false return under verification and delivered a false statement of account along with it and the provisions of section 277 were attracted.*
- *The petitioner had wilfully, attempted to evade tax by submitting a false return and, therefore, came within the mischief of section 276C(1). Under Explanation to section 276C(1) the mere possession or control of any books of account or other documents containing a false entry or statement does itself amount to an attempt to evade tax within the meaning of section 276C(1). The furnishing of a statement of profit and loss account showing a false amount of collection would amount to giving false evidence within the meaning of section 193. By submitting a false return and a false statement of profit and loss account the petitioner had attempted to deceive the ITO and had fraudulently and dishonestly induced him to pass an order of assessment on the basis of the false return and thereby evade proper taxation. Thus, prima facie the provisions of the aforesaid sections came into play. The question whether the petitioner was misled by his accountant or whether he deliberately and wilfully submitted the false return, the false statement of account and maintained a false account, was a matter which had to be gone into in the trial court and not in these proceedings.*

Section 139(8A) of the 1961 Act

■ Madan Lal v. ITO [1998] 98 TAXMAN 395 (RAJ.)

- *The very basis on which the application of the petitioner under section 245(2) was rejected was not in accordance with law because there was change in circumstances as the penalty itself was quashed by the Tribunal subsequent to the decision given on the earlier application under section 245(2) of the Code of Criminal Procedure. Hence, the matter could have been examined by the Trial Court on merit as to whether the proceedings be quashed or should be allowed to be continued.*
- *The matter would have been sent back to the Trial Court for deciding it afresh but looking to the special facts of the case, in the light of the Board's Circular, that the amount of alleged evasion of tax on the income of Rs. 16,000 was meagre and without going to the merits of the case, the complaints filed under sections 276C and 277 of the Income-tax Act and section 197, read with section 120B, of the Indian Penal Code, for the assessment year 1982-83 were to be quashed as even according to the instructions of the CBDT prosecution in cases where the income concealed was less than Rs. 25,000 was not warranted. Therefore, the petition was allowed.*

Section 139(8A) of the 1961 Act

- **Sujatha Venkateshwaran v. ACIT [2018] 408 ITR 545 (Madras)**
- Where assessee had subscribed her signature in profit and loss account and balance sheet of company for relevant assessment year which were filed alongwith returns, Assessing Officer was justified in naming her as Principal Officer and accordingly she could not be exonerated for offence under section 277
- **Prabir Kumar Shaw v. Union of India[2019] 110 taxmann.com 536 (Patna)**
- Where in year 2008 prosecution was launched against assessee for offences pertaining to wrong disclosure of income for assessment year 1994-95, taking into account year in which offence was committed and fact that tax liability had already been paid along with penalty, order of cognizance and all criminal proceedings arising out of it were to be quashed

Section 139(8A) of the 1961 Act

- **Confident Projects (India) (P.) Ltd. v. Income-tax Department)/[2021] 433 ITR 147 (Karnataka)**
- For an offence to be said to be committed under section 277, misstatement is required to be wilful, made with a mala fide or dishonest intention to prosecute assessee
- Delayed payment of income tax would not amount to evasion of tax, so long as there is payment of tax, more so for reason that in returns filed there is an acknowledgement of tax due to be paid
- Without specific allegations made against each of directors who is intended to be prosecuted, all directors of company cannot be automatically prosecuted for any violation of Income-tax Act
- At time of taking cognizance and issuance of process, Court taking cognizance is required to pass a sufficiently detailed order to support conclusion to take cognizance and issue process
- SLP against above is dismissed [2022] 135 taxmann.com 360 (SC)

Section 139(8A) of the 1961 Act

- **K.E. Gnanavel Raja v. ACIT)/[2022] 444 ITR 562 (Madras)**
- Where penalty was levied on assessee for wrong calculation of loss, but, same was not supported by books of account or other documents and there was no concealment of income, continuation of prosecution against assessee would amount to abuse of process of law and hence, said criminal proceedings were to be quashed and set aside
- **G.P. Engineering Works Kachhwa v. Union of India)/[2022] 446 ITR 563 (Allahabad)[08-02-2022]**
- No limitation for submission or consideration of compounding application has been provided under sub-section (2) of section 279 and, therefore, compounding application of assessee could not have been rejected by Income-tax Authority concerned by relying on CBDT Circular dated 14-6-2019 on ground of delay in filing application

Section 139(8A) of the 1961 Act

- **C.R.N. Investments (P.) Ltd. v. Chief Commissioner of Income-tax [2023] 146 taxmann.com 8 (Madras)**
- Where assessee represented by its MD, showed complicity in evading tax and had also been subjected to penalty, since assessee had paid penalty and tax, no useful purpose would be served by prosecuting MD of assessee as she was now aged 76 years and she took advantage of legal remedy available under law as per Circular F. No. 285/08/2014-IT(INV.V)/196, dated 16-9-2022 and thus, case of assessee would be a fit case for compounding
- **Rajinder Kumar v. State [2023] 147 taxmann.com 445 (Delhi)**
- Where assessee on being show caused regarding opening of an account in a foreign bank in year 1991 filed a revised return in assessment year 2006-07 and declared his additional income, since at time of commission of offence in year 1991 he was more than 55 years of age and not 70 years, he could not be permitted to take benefit of Instruction No. 5051, dated 7-2-1991 to find an escape route for wrong committed by him

Section 139(8A) of the 1961 Act

- **Satendra Kumar Jalan v. State of Jharkhand [2023] 147 taxmann.com 563 (Jharkhand)**
 - Where penalty under section 271(1)(c) imposed upon assessee was set aside by Tribunal on merit holding that there was no concealment of income by assessee, entire criminal proceedings under section 276C was also to be quashed automatically.
- **Union of India v. Pusparani Khana [2023] 151 taxmann.com 249 (Orissa)**
 - Where penalty proceeding initiated against assessee for concealment of income was dropped and there was no evidence on record to establish that assessee made deliberately or intentionally false statement, Trial Court rightly acquitted assessee for charges under section 276C

Section 139(8A) of the 1961 Act

- **TVH Energy Resources (P.) Ltd. v. ACIT [2023] 157 taxmann.com 590 (Madras)**
 - Where Assessing Officer made addition to assessee's income on ground that it incurred expenses in cash and did not explain source and thereafter levied penalty under section 271(1)(c) and Tribunal, having found that there was no material for cash payment made by assessee set aside penalty, criminal prosecution for offence under sections 276C(1) and 277 on same set of facts was not maintainable

Section 139(8A) of the 1961 Act

- **Nirlon Ltd. v. DCIT [2024] 164 taxmann.com 754 (Bombay)[26-06-2024]**
- When penalty itself was deleted then there was no question of prosecuting assessee under sections 276C, 277 and 278B; complaint filed against assessee deserved to be set aside
- A short question involved in this petition is as to whether the prosecution launched by the Deputy Commissioner against the assessee under section 276C as well as under sections 277, 288B and 278E would amount to 'wifful evasion of tax' in view of the settled legal position by a catena of decisions, more particularly, the decision of the Supreme Court in case of *K.C. Builders v. Asstt. CIT* [2004] 135 Taxman 461/265 ITR 562. [Para 15]

Section 139(8A) of the 1961 Act

- **Nirlon Ltd. v. DCIT [2024] 164 taxmann.com 754 (Bombay)[26-06-2024]**
- The Supreme Court in the case of *K.C. Builders (supra)* has laid down that the Assessing Officer cannot proceed with the prosecution even after the order of concealment has been *set aside* by the Tribunal. When the Tribunal has *set aside* the levy of penalty, the criminal proceedings against the assessee cannot survive for further consideration. The High Court has taken the view that the charges have been framed and the matter is in the stage of further cross-examination and, therefore, the prosecution may proceed with the trial. The view taken by the High Court is fallacious. If the trial is allowed to proceed further after the order of the Tribunal and the consequent cancellation of penalty, it will be an idle and empty formality to require the assessee to have the order of the Tribunal exhibited as a defence document inasmuch as the passing of the order is unsustainable and unquestionable
- The ratio laid down by the Supreme Court in the aforesaid decision is squarely applicable to the facts of the instant case. [Para 16]

Section 139(8A) of the 1961 Act

■ Nirlon Ltd. v. DCIT [2024] 164 taxmann.com 754 (Bombay)[26-06-2024]

■ The officers of the revenue are required to strictly abide by the Instruction bearing F. No. 285/90/2008-IT(Inv.-I)/05, dated 24-4-2008 and the Circular No. 24 of 2019. Action of the revenue in launching the prosecution against the assessee is bad in law being contrary to the specific instructions having binding effect. The prosecution appears to have been launched in premature and hasty manner without penalty being confirmed by the Tribunal which is in contravention of the binding instructions of the CBDT. [Para 18]

■ A policy is adopted by the CBDT in respect of launching of prosecution under section 276C(1), *i.e.*, wilful attempt to evade tax. The CBDT had laid down guidelines bearing F. No. 285/90/2008-IT (Inv.-I)/05, dated 24-4-2008 prescribing the time frame to process cases for prosecution. As regards section 276C(1) is concerned, it has been specified that all cases should be processed for prosecution where penalty under section 271(1)(c) exceeding Rs. 50,000 is imposed and confirmed by the Tribunal. The assessee *vide* a communication had informed the Principal Commissioner that the matter is pending before the Tribunal. In contravention of the aforesaid instructions, prosecution came to be

Jagdish T Punjabi the assessee. [Para 19]

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Section 139(8A) of the 1961 Act

■ Nirlon Ltd. v. DCIT [2024] 164 taxmann.com 754 (Bombay)[26-06-2024]

■ In the instant case, penalty arising out and based on levying of additional tax has been *set aside* by the Tribunal. In that view of the matter, the prosecution proceedings on the same facts ought to be automatically quashed. [Para 20]

■ The Supreme Court in case of *Union of India v. Dharmendra Textile Processors* [2008] 166 Taxman 65/[2007] 295 ITR 244 has held that the penalty under section 271(1)(c) is a civil liability. Wilful concealment is not an essential ingredient for attracting the civil liability as is the case in the matter of prosecution under section 276C.

■ Since it is a civil liability, it does not require *mens rea* and in case of prosecution *mens rea* is *sine qua non* and, therefore, the prosecution cannot be allowed to be continued, more particularly, in view of the fact that the Tribunal had deleted the penalty. [Para 21]

■ The Supreme Court in case of *K.C. Builders (supra)* has in no uncertain terms held that the penalty and prosecution under the Act run hand-in-hand. When penalty itself is deleted then there is no question of prosecuting the assessee under sections 276C(1), 277 and 278B. [Para 22]

Jagdish T Punjabi

June 5, 2026

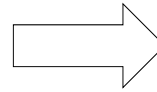
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Section 139(8A) of the 1961 Act

- **Nirlon Ltd. v. DCIT [2024] 164 taxmann.com 754 (Bombay)[26-06-2024]**
- Admittedly no appeal has been preferred against the order passed by the Tribunal till date. Limitation to file an appeal has also expired. Therefore, the order has attained finality. [Para 23]
- The Supreme Court in case of *Radheshyam Kejriwal v. State of West Bengal* [2011] 12 taxmann.com 107/108 SCL 406 has held that where the departmental proceeding has resulted in exoneration of the assessee, then the criminal prosecution must also fail. [Para 24]
- In view of the above, the complaint and all the orders are quashed and set aside. [Para 25]

Provisions for common order of assessment and penalty

Amendments by FA, 2026 to 1961 Act



Amendments by FA, 2026

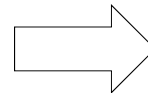
- Section 274(1) of the 1961 Act has been amended to provide that a reasonable opportunity of being heard shall be provided by way of a show cause notice to that effect.
 - 274(1) No order imposing a penalty under this Chapter shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard *by way of a show cause notice to that effect.* (the italicized words are inserted by FA, 2026 w.e.f. 1.3.2026)

Amendments by FA, 2026

- Section 274(4) has been inserted by the FA, 2026 w.e.f. 1.3.2026. This section reads as under –
 - “274(4) Notwithstanding anything contained in any other provision of this Act, where any draft of the proposed order of assessment under section 144C or assessment under section 143(3) or reassessment under section 147 is made on or after 1.4.2027 in respect of the assessment year 2026-27 or any earlier assessment year, -
 - (a) the penalty under section 270A, if any, shall constitute part of such draft assessment or shall be imposed as a part of such order of assessment or reassessment, as the case may be; and
 - (b) the reference to the assessment order or the penalty order under section 270A in any of the provisions of this Act shall take reference to such order of assessment or reassessment as the case may be.

Amendments by FA, 2026

- Section 274(5) has been inserted by the FA, 2026 w.e.f. 1.3.2026. This section reads as under –
 - “274(5) Where the approval of the Joint Commissioner is taken for passing of an order of assessment or reassessment on or after the 1st April, 2027, such approval shall also be deemed to be the approval for the imposition of penalty under section 270A, if any, constituting part of such order of assessment or reassessment.



Analysis of the amendments

Amendments by FA, 2026

- Going forward, penalty order will form part of an assessment order in the following cases –
 - draft of proposed order under Section 144C, or
 - assessment under section 143, or
 - reassessment under section 147;
 - such order is made in respect of the AY 2026-27 or any earlier AY;
 - such order is passed on or after 1.4.2027;
- Therefore, in cases of assessments u/s 143(3) for AY 2026-27 or for reassessments to be done on or after 1.4.2027, the order of penalty shall be part of order of assessment.
- The above provisions will not apply for block assessment cases except cases of search during the period from 1.4.2021 to 30.9.2024 where assessment was required to be completed under section 147 of the Act.

Amendments by FA, 2026

- The provisions of common order of assessment and penalty do not apply to –
 - (a) best judgement assessment,
 - (b) assessment / reassessment orders partially set-aside by appellate authority,
 - (c) assessment /reassessment orders passed pursuant to GAAR Panel directions;
 - (d) block assessment cases except cases of search during the period from 1.4.2021 to 30.9.2024 where assessment was required to be completed under section 147 of the Act

- No change in limitation period for passing assessment/reassessment order [S.286 of ITA 2025]
 - Common order also to be completed within applicable limitation period

Amendments by FA, 2026

- Sub-section (5) applies to cases where approval of JCIT is taken for passing an order of assessment or reassessment on or after 1.4.2027. Approval of JCIT is required in block assessment cases.

- Section 148B mandates approval of JCIT in respect of an assessment year covered by clauses (i) to (iv) of Explanation 2 to section 148. It is relevant to note that section 148 as substituted by the Finance (No. 2) Act, 2024 w.e.f. 1.4.2024 does not have an Explanation. The Explanation 2 being referred is explanation 2 to section 148 as it stood prior to its amendment by Finance (No. 2) Act, 2024

Amendments by FA, 2026

- The 4 cases are –
 - where a search is initiated u/s 132 or books or account, other documents or any assets are requisitioned u/s 132A, on or after 1.4.2021 in the case of the assessee; or
 - a survey is conducted u/s 133A other than under sub-section (2A) of that section or after 1.4.2021, in the case of the assessee; or
 - the AO is satisfied, with prior approval of PCIT or CIT, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned u/s 132 or u/s 132A in case of any other person on or after 1.4.2021, belongs to the assessee; or
 - the AO is satisfied, with the prior approval of the PCIT or CIT, that any books of account or documents, seized or requisitioned u/s 132 or u/s 132A in case of any other person on or after 1.4.2021, pertains or pertain to, or any information contained therein, relate to the assessee.

Amendments by FA, 2026

- Therefore, the orders to be passed with prior approval of JCIT will be in respect of search conducted on or after 1.4.2021 but before 1.10.2024.
- As on 1.4.2027, the pendency will be only in respect of orders for AY 2026-27 (normal scrutiny assessments); AY 2025-26 (Transfer Pricing Cases where an extra year is available to the AO); and all cases of reassessments.
- When an assessment in respect of which search was conducted on or after 1.4.2021 but before 1.10.2024 is reopened u/s 147 then to such an assessment also the provisions of section 148B requiring approval of JCIT will apply.
- When any of the above assessments are set aside by ITAT or by CIT u/s 263 then to the fresh assessment provisions of section 148B shall apply.
- For searches conducted on or after 1.10.2024 provisions of Block Assessment apply.
- For assessment orders which do not require approval of JCIT, separate approval of JCIT shall be required to levy penalty as part of common order of assessment and penalty.

Section 144B not amended – will the common order work?

- Section 144B consequent to implement the decision to have common order of assessment and levy of penalty under section 270A in respect of orders to be passed on or after 1.4.2027.
- Section 144B as well as Rule 176 provides for a show cause notice. In response to SCN, assessee files a reply. Upon receiving the reply, AO passes a draft assessment order or Income Loss Determination Proposal (ILDLP). This is sent for approval. Upon approval AO passes a final order and initiates penalty proceedings.
- Therefore, section 144B only authorizes initiation of penalty proceedings. This is not amended.
- Further, it is not known whether it is necessary that the penalty proceedings will go before the same AO because it is supposed to be Random Allocation System. It is not known as to how their allocation will go - before same AO or otherwise.
- There will be an amendment post 1.4.2027 in section 144B and Rule 176.

Recovery of penalty demand

- Penalty demand not enforceable till order of CIT(A)/ITAT (in case of DRP matters)
- As per FM's clarification in Budget speech, penalty amount not to form part of pre-appeal deposit of amount. Refer, next bullet
- Interest for non payment of penalty demand in terms of S. 411 of ITA 2025 (akin to S. 220(2) of ITA 1961) is not to be levied till date of passing of order by CIT(A)/ITAT on common assessment order
- As per CBDT Office Memorandum [F.NO.404/72/93-ITCC] dated 29 February 2016 read with Office Memorandum [F.NO.404/72/93-ITCC], dated 31 July 2017, the taxpayer is required to pay 20% of demand (which includes tax and interest) for seeking stay on recovery of balance demand in cases where taxpayer has filed an appeal before CIT(A).
- FM in her budget speech clarified that quantum of pre-payment is being reduced from 20% to 10% and will continue to be calculated only on "core tax demand".
- This may need modification of CBDT instruction.

Recovery of penalty demand

- However, there is no corresponding amendment made in s. 254 of ITA 1961 for reducing the minimum amount of payment demand of 20% for seeking stay on recovery when appeal in DRP matters is pending before ITAT.
- While interest under section 220(2) may not be leviable, the demand arising as a result of imposition will continue to be reflected on the portal thereby affecting issuance of a certificate under section 281.

Other difficulties / anomalies

- Section 275 has not been amended as a result it grants time to the AO to pass an order imposing penalty.
- Will there be a separate SCN for imposition of penalty or will the SCN proposing variation to returned income also ask for explanation to show cause why penalty should not be levied.
- Penalty order is to be passed with approval of JCIT in case penalty is Rs 10,000 or more. What happens if the AO passes an order and levies penalty without seeking approval – does the entire order become bad in law?
- Draft order mentioned but no mention of final order
- Section 270A / 439 have a reference to initiation of penalty
- What would be the consequences if penalty is not a part of the assessment order.

Implicit over ruling of certain provisions

Implicit over ruling of certain provisions

- The time limit for imposing penalty contained in section 275 will become redundant as far as it is covered by the amendment dealing with combined order of assessment and penalty.
- Section 270A interalia empowers JCIT(A) and CIT(A) to impose a penalty. JCIT(A) and CIT(A) do not pass an assessment order. Now, since it has to be a combined order of assessment and penalty, is it intended that they are not empowered to impose penalty under section 270A and therefore, section 270A stands amended to that extent or atleast becomes non-operational.

Issues likely to arise

Issues

- Will interest not be payable in respect of all penalty orders passed before 1.4.2027 but demand whereof is outstanding.
- Also, in case of orders of penalty which are to be passed on or after 1.4.2027 (where assessment proceedings are concluded but penalty was in abeyance) will the demand not attract interest?
- In case of an order which travels to DRP, the AO will pass a draft order and also impose penalty (after hearing the assessee) and then the order is taken to DRP. If, DRP deletes the addition made by AO, then will the assessment order still have penalty because the AO has to pass an order which is in conformity with order of DRP.

Issues

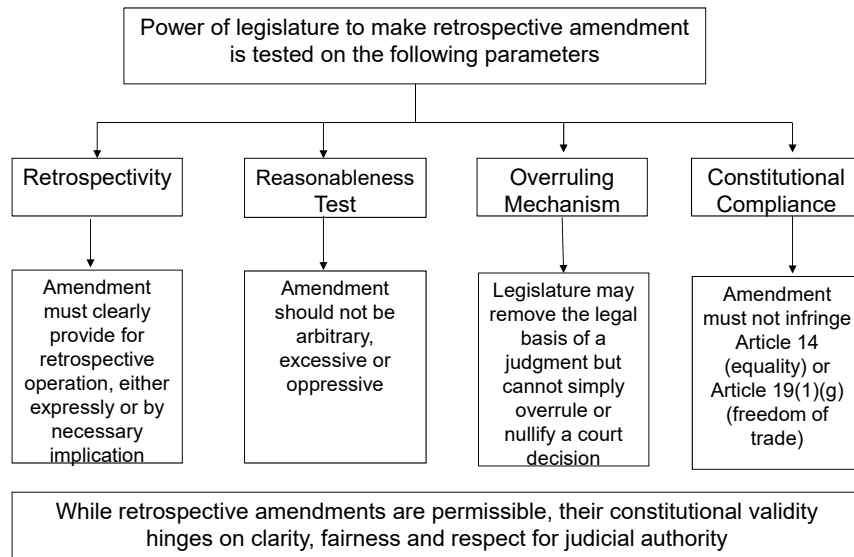
- In a reverse case where DRP enhances the addition made by AO, the penalty in the draft order will be with reference to the original addition made by AO. Post order of DRP, there is no provision for AO hearing the assessee qua the enhancement or penalty in respect of enhanced amount. Will the penalty continue only in respect of original addition?
- In case AO levies penalty without obtaining approval, as required. Will even the assessment order be regarded as bad in law or it will be only imposition of penalty in that order which will be bad in law.
- Will one appeal be filed or there will be two appeals – no amendment in section 246A.

S. 115BBE – voluntary compliance through Updated Return

Retrospective Amendments made by Finance Act, 2026

Constitutional validity of Retrospective Amendments

Analysis of the impact the amendments will have



Challenges to retrospective amendments

- Can the Legislature, through retrospective amendment, effectively undo a judgment of the High Court or Supreme Court without violating the constitutional balance of powers? *State of Karnataka v. Karnataka Pawn Brokers Association* [(2018) 91 taxmann.com 228 (SC)]
- When laws are amended retrospectively “*notwithstanding any court order*”, does it undermine the finality of judicial decisions and the credibility of litigation process?
- Can administrative inconvenience or revenue loss be a constitutionally valid justification for retrospective legislative intervention?
- When statutory procedures have been interpreted by courts, is it constitutionally fair for Legislature to retrospectively alter the law solely to protect revenue interest arising from a large number of pending cases?

Retrospective Amendments by FA, 2026

Retrospective Amendments to over turn court rulings

Sr. No.	Nature of controversy	Relevant court decision	Retrospective amendment date
1	Due date for passing of order by TPO (manner of computing limitation period of 60 days)	Pfizer Healthcare India (P.) Ltd. v. JCIT [2021] 124 taxmann.com 536 (Mad HC)	1 June 2007
2	Time limit for completion of assessment pursuant to directions of DRP	ACIT v. Shelf Drilling Ron Tappmeyer Ltd [2025] 177 taxmann.com 262 (SC)	1 October 2009
3	Document Identification Number (DIN)	Brandix Mauritius Holdings Ltd. [2023] 149 taxmann.com 238 (Delhi HC)	1 October 2019
4	Issuance of reassessment notice under section 148 by JAO v. FAO	Hexaware Technologies Ltd. v. ACIT [2024] 464 ITR 430 (Bom HC)	1 April 2021
5	Circumstances in which approvals by income-tax authority not to be invalid	Several decisions holding approval to be without application of mind	1 April, 2021

Analysis of the impact the amendments will have

- Is the manner of making retrospective amendments valid?

- As a result of the amendments, what will be the fate of pending proceedings under different scenarios – relevant to ascertain limitation period –
 - Category A : Where notice / draft assessment order, etc was challenged before High Court under a Writ Petition and no formal assessment was concluded;
 - Category B : Where assessment / reassessment order was challenged before HC under a Writ Petition;
 - Category C : Where assessment / reassessment order was challenged before respective appellate forums (like CIT(A) / ITAT) / HC / SC) under normal appellate route.

Analysis of the impact the amendments will have

- Likely to give rise to demand for past years under litigation including levy of interest under section 234B and/or section 220(2) of the Act
 - Can taxpayer seek waiver of interest under S. 234B under the CBDT order dated 26 June 2006 allowing such waiver of interest also to cases involving retrospective amendment?
 - Whether taxpayer can seek waiver of s. 220(2) interest (wherever applicable) under s. 220(2A) of ITA?

Reference to TPO

S. 92CA of 1961 Act

S. 166 of 2025 Act

Section 9 of the General Clauses Act

■ **9. Commencement and termination of time.—**

(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word “from”, and, for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

Analysis: When legislature uses “from” and “to” type of language the first day is to be excluded and the last day needs to be included.

Reference to TPO [S. 92CA of 1961 Act / 166 of 2025 Act]

■ Position prior to amendment by FA, 2026

- The AO makes a reference to TPO under section 92CA for computation of ALP. The TPO is required to pass an order “*at any time before sixty days prior to the date on which the period of limitation referred to in section 153, or as the case may be, in section 153B.....*”

■ Controversy

- There were several TP orders which were quashed on the grounds of being time barred for one day delay in passing TP order.

■ Amendment

- Instead of back calculating the last date on which order can be passed, the FA, 2026 has provided the cut off date by which the order can be passed.

Reference to TPO [S. 92CA of 1961 Act / 166 of 2025 Act]

■ The position w.r.e.f. 1.6.2007 is as follows

Cases	Limitation to pass assessment order	Cut-off date for passing TP order
Assessment / Reassessment	March 31 (not a leap year)	January 30
	March 31 (a leap year)	January 31
Search cases	December 31	November 1

■ Rationale

- The intent of the legislature has always been to include the date of limitation in the computation of 60 days. However, the courts have annulled number of assessments holding that period of 60 days does not include the date of limitation and therefore assessments which have lawfully made by the TPO with clearly 60 days remaining for final assessment have been struck down though the legislative intent is otherwise.

Reference to TPO [S. 92CA of 1961 Act / 166 of 2025 Act]

■ Position in 2025 Act prior to Amendment by FA, 2026

- The TPO was required to pass an order "... at any time sixty days before the expiry of the limitation period referred to in section 286 or 296, for making the order of assessment or reassessment or re-computation or fresh assessment."

■ Controversy

- Under 1961 Act with provisions pari materia to the above provision, there were several TP orders, which were quashed on the grounds of being time barred for one day delay in passing TP order.

■ Rationale

- The objective of the new law has been to provide simplicity in language and provisions so as to avoid interpretational issues and prevent litigation. Therefore, there is a need to clarify the position of law in the new Income-tax Act, 2025.

Reference to TPO [S. 92CA of 1961 Act / 166 of 2025 Act]

■ Position in 2025 Act after Amendment by FA, 2026

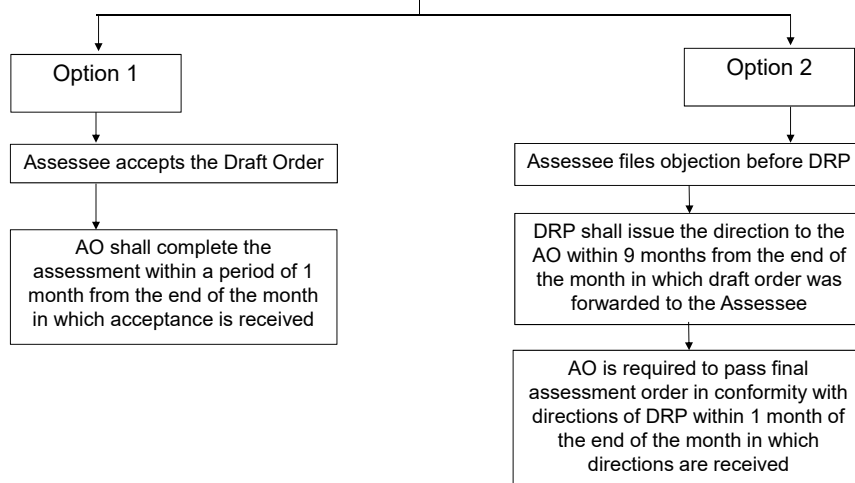
- The TPO is required to pass an order "... at any time before one month prior to the month in which the period of limitation referred to in section 286 or 296, for making the order of assessment or reassessment or re-computation or fresh assessment, expires"

Cases	Limitation to pass assessment order	Cut-off date for passing TP order
Assessment / Reassessment	March 31	January 31
Search cases	December 31	November 1

Reference to DRP S. 144C of 1961 Act S. 275 of 2025 Act

Reference to DRP : S. 144C of the 1961 Act / 275 of 2025 Act

S. 144C : AO, upon receiving order of TPO, if he proposes to make a variation which is prejudicial to the interest of the assessee is required to issue a Draft Assessment Order to assessee. Then within 30 days of receipt of order -



Reference to DRP

■ Position prior to amendment by FA, 2026

- In cases where objections are filed before DRP, as per section 144C(13), the AO shall –
 - “in conformity with directions, complete, notwithstanding anything to the contrary contained in section 153 or section 153B, the assessment ..., within one month from the end of the month in which directions are received.”
 - Section 153 provides the time limit for completion of assessment, reassessment and re-computation. Section 153B provides for time limit for completion of assessment in search cases.

■ Controversy

- In case of reference to DRP, the time limit prescribed to pass assessment order under section 153 is applicable to final assessment order or draft assessment order.

Reference to DRP

■ Amendment

- The amendment made by FA, 2026 clarifies that time limit prescribed under section 153 / 153B shall apply for issuance of the draft assessment order and time limits u/s 144C shall operate for finalization of assessment, notwithstanding time limits under section 153 / 153B.

■ Rationale:

- The proposed amendment clarifies the legislative intent and to remove the existing ambiguity in the law.
- The Apex Court in the case of **Shelf Drilling Ron Tappmeyer [177 taxmann.com 262 (SC)]** has rendered split verdict highlighting the need for certainty and clarity in legislative intent.

Non quoting of DIN

DIN controversy

- **Existing Provisions:**
- **CBDT Circular No. 19 of 2019** mandates quoting of computer generated DIN on any communication issued by the income-tax authority relating to assessment, appeals, etc.
- **Section 292B of the 1961 Act** : No return of income, assessment, notice, summons or other proceedings shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in return of income, assessment, notice, or other proceeding if such return of income, assessment, notice or other proceeding is in substance and effect in conformity with or according to the intent and purpose of the Act.
- **Controversy:** There have been various judgments of High Courts where assessments have been held to be invalid on grounds like non-quoting of DIN on the order – **Siemens Ltd. v. DCIT [(2025) 181 taxmann.com 448 (Bom. HC)]**

DIN controversy

■ Section 292BA introduced by the FA, 2026 provides that :

- *“Notwithstanding anything contained in any judgment, order or decree of any court, for the removal of doubts, it is hereby clarified for the purposes of section 292B that **no assessment under any of the provisions of this Act shall be invalid** or shall be deemed to have been invalid on the ground of any mistake, defect or omission in respect of quoting of a computer generated Document Identification Number, **if the assessment order is referenced by such number in any manner.**”*

- **Rationale of the amendment :** The legislature has introduced a curative amendment to validate proceedings by rectifying procedural defects caused by the failure to quote DIN, ensuring that notices or summons issued without a DIN do not invalidate assessment proceedings and thereby settling related litigation.

DIN controversy

■ Participants may consider the following questions:

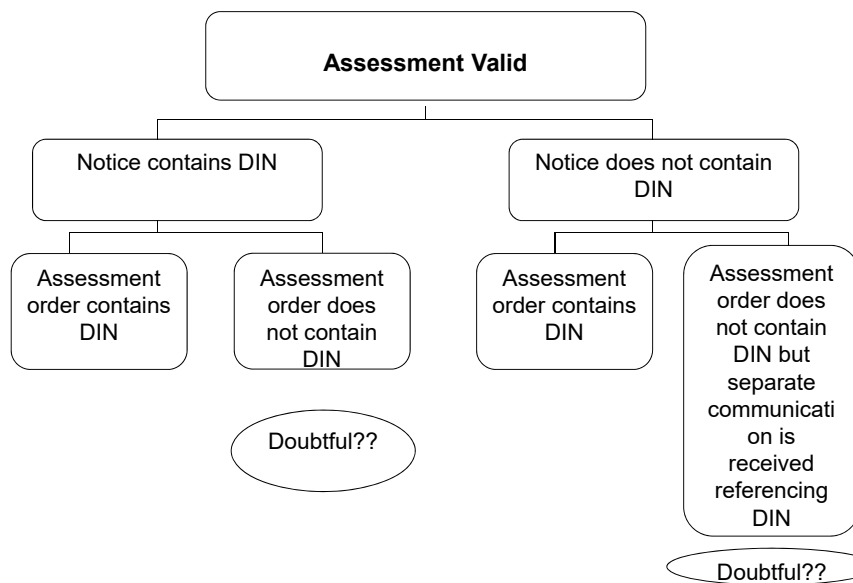
- What if assessment order does not contain DIN – will favourable judgments still prevail?
- What if separate communication is received referencing DIN after receipt of assessment order – will this be treated to be covered by the expression “any manner” or will the favourable judgments prevail?
- Does the amendment cover non-generation of DIN as well or does it cover only cases where DIN is generated but has not been quoted? If the answer is that the amendment does not cover cases of non-generation of DIN, then assessee will need to make an application under RTI / seek inspection of records to verify the generation of DIN.

DIN controversy

Impact Analysis:

- Amendment only covers "assessment".
 - Whether other proceedings like DRP proceedings or rectification are covered?
 - Other communication not forming part of "assessment", may not be governed by S.292BA making the communication invalid as per judicial rulings. For instance:
 - Revision order under S.263/ 264
 - CIT(A) Order
- No protection is available if DIN is not mentioned in assessment order but is mentioned in other communication
 - Conversely, DIN missed out in notice but mentioned in assessment order will now get validated.
- Whether cases where DIN is not mentioned in the assessment order but communicated through a separate DIN Intimation Letter are protected?

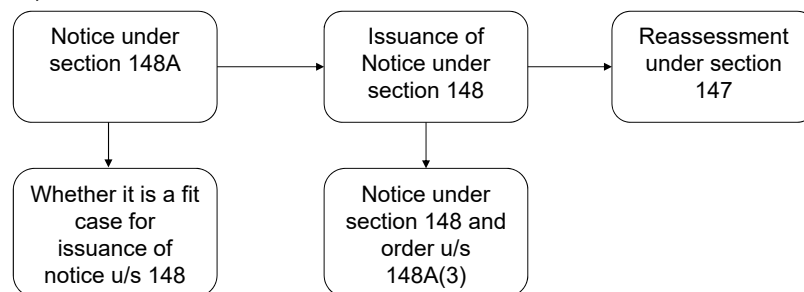
DIN : Determining the validity of assessment



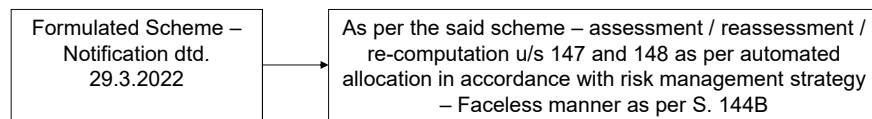
Reassessment : JAO / FAO controversy

Jurisdiction to initiate reassessment [Ss. 148, 148A / 279 & 280]

- Steps in reassessment proceedings under provisions before amendment by FA, 2026



- Section 151A : Central Government formulated a scheme for assessment or reassessment or re-computation in a faceless manner



Judicial pronouncements : Divergent views of courts

Case laws in favor of assessee

Contention of concurrent jurisdiction held to be invalid

Hexaware Technologies Ltd. v. ACIT [(2024) 464 ITR 430 (Bom. HC)]

Case laws against assessee

Pre-enquiry can be conducted by JAO – concurrent jurisdiction argument upheld

T K S Builders (P.) Ltd. v. ITO [(2024) 167 taxmann.com 759 (Delhi HC)]

Kanwaljeet Kaur v. ACIT [(2025) 171 taxmann.com 174 (Delhi HC)]

Jurisdiction to initiate reassessment now with JAO

- **Section 147A inserted by FA, 2026 w.r.e.f. 1.4.2021:**
- Notwithstanding anything contained in any judgment, order or decree of any court or in section 151A or in any scheme framed thereunder, for the removal of doubts, it is hereby clarified that the Assessing Officer for the purposes of sections 148 and 148A shall mean and shall always be deemed to have meant to be an Assessing Officer other than National Faceless Assessment Centre or any assessment unit referred to in sub-section (3) of section 144B.
- **Rationale of the amendment**
- As per EM – “4. Accordingly, it was never the intention of the legislature to mandate the NaFAC or the Assessment Units in NaFAC to involve pre-assessment enquiry in any manner whether for issuance of notice under section 148A or under section 148. The faceless assessment for reassessment under section 147 was only required to be carried out to the extent provided under section 144B. The intended objective of the scheme framed was under section 151A that is e-Assessment of Income Escaping Assessment Scheme, 2022 was also the same.”

Jurisdiction to initiate reassessment now with JAO

- Can the amendment disturb the writ petitions decided in favor of the assesseees where the Department has not challenged such orders before the Supreme Court?
- What will happen to cases where effect has already been given to ITAT / High Court orders?
- How will the limitation period for completion of reassessment proceedings be computed in cases where the department has preferred an SLP to the SC against the decision of the HC allowing Writ Petition of the assessee.

Section 292BC: Circumstances in which approval not to be invalid

Text of Reasons given for the amendments proposed

Provisions where sanction is required (Illustrative list)

- Approval / sanction is required in the following cases under the Act -
 - if a case is not selected for scrutiny in CASS then it can be taken up for scrutiny only with the approval of the CIT;
 - cases of compulsory scrutiny;
 - section 133A – survey can be undertaken only with prior sanction
 - issuance of Notice under section 148 (from 1.4.2021 upto 31.8.2024)
 - Second proviso to 148 (issuance of notice where information is received under the scheme notified under section 135A)
 - order under section 148A(d)
 - conducting an inquiry under section 148A(a)
 - approval of assessment in search cases (section 148B)
 - direction to get Special Audit done (approval of CIT)(Section 142(2A))

Section 292BC

- The courts have struck down assessments on the ground that sanction –
 - approval granted by wrong authority
 - two authorities have accorded sanction
 - there has been non-application of mind on the part of approving authority
 - absence of detailed reasoning in the sanction
 - sanction accorded without referring to seized material (where seized material was not forwarded to the sanctioning authority)
 - notice was issued prior to obtaining sanction
 - considering the number of cases for which sanction was granted in a day (court held it was not possible to apply mind)
 - was granted hastily
 - sanction was not signed
 - approval granted merely on the basis of assessment order without examining the seized material or assessment records – Anuj Bansal Delhi HC
 - approval granted by CIT where AO had not granted a hearing to the assessee before order special audit – Sahara India – 300 ITR 403 (SC)

EM to insert section 292BC

■ Circumstances in which approval not to be invalid

■ The “approval system” under the Income-tax Act in respect of assessment proceedings is a critical administrative mechanism where certain actions or proceedings require approval by specified income-tax authority. The statutory intent is only to have a procedural and administrative check and nothing beyond it. This has also been the interpretation by Courts. Interpretation have been emerging in recent times, reading elements of quasi judicial powers into it. However, **approval is only a procedural safeguard** and not a quasi-judicial process.

■ 2 Section 153D of the Income-tax Act, 1961 deals with mandatory prior approval for assessment orders in certain search related cases. It provides that no order shall be passed by the assessing officer in the case of assessments made consequent to the search and seizure operations without the approval of the Joint Commissioner. Accordingly, if the assessment is completed with the approval of the specified authority, the requirement of law as regards approval for search assessments is fulfilled.

EM to insert section 292BC

■ 3 Similarly, section 151 of the Income-tax Act, 1961 provides for sanction (approval) required before issuing a notice for reassessment under section 148. Prior to the issue of notice under section 148, the assessing officer is required to pass an order under section 148A(3) [erstwhile 148A(d)]. The objective is to put administrative check by the higher tax authorities to ensure that due process of law has been followed for initiating reassessments. Accordingly, if the assessment is reopened with the approval of the specified authority, the requirement of law in this regard is fulfilled.

EM to insert section 292BC

- 4 In various judgments of courts, a differing view has been taken regarding sufficiency or adequacy of approvals granted by the specified authority. The courts have quashed the assessments questioning these approvals without going into the merits of the case. The grounds which have been taken are like absence of detailed reasoning or mechanical application of mind. Where detailed reasoning has been given, the assessments have been quashed on ground that seized material has not been submitted with the draft orders. Even where affidavits have been given by approving authorities, the approvals have not been sustained. Many other grounds have also been taken like time taken in providing the approval vis-à-vis the volume of seized material and the number of assessments. Thus, assessments have been quashed without going into the merits of the case. The Revenue has suffered on this account considerably despite the fact that administrative checks and balances were fully complied with and the due process of law had been property followed. Thus, the legislative intent has not been correctly followed.

EM to insert section 292BC

- 5 Further, the Income-tax Act, 2025 is coming into force from 1st of April 2026. The objective of the new law has been to provide simplicity in language and provisions so as to avoid interpretational issues and prevent litigation. Therefore, there is an urgent need to clarify the position of law in the new Income-tax Act, 2025. The intention of the legislature also needs to be clearly laid out in the Income-tax Act, 1961.
- 6 Accordingly, notwithstanding anything contained in any judgment, order or decree of any court, for the removal of doubts, it is proposed to clarify that any approval given by an income-tax authority in relation to any assessment proceedings shall be deemed to be administrative and supervisory in nature and shall not be invalid or shall not be deemed to be invalid by reason of any insufficiency of reasons recorded or by reason of any defect in the form or manner of its authentication or communication including whether digital signature have been appended to such approval or not where such approval has been granted electronically.

EM to insert section 292BC

- 7 Suitable amendments are also proposed to be carried out in the Income-tax Act, 2025 so that correct interpretation is taken, litigation is minimized and certainty is achieved.
- 8 The clarification in Income-tax Act, 1961 shall come into force with effect from 1.4.2021. The amendment in Income-tax Act, 2025 shall come into force with effect from 1st day of April, 2026 [Clauses 26A and 106]

Section 292BC inserted retrospectively w.e.f. 1.4.2021

- While the EM states –
 - The “approval system” under the Income-tax Act in respect of assessment proceedings is a **critical administrative mechanism** where certain actions or proceedings require approval by a specified income-tax authority.
 - Interpretation have been emerging in recent times reading elements of quasi-judicial powers into it. However, **approval is only a procedural safeguard** and not a quasi-judicial process.
 - If the assessment is completed with the approval of specified authority, the requirement of law as regards approval for search assessments is fulfilled.
 - The objective is to **put in place an administrative check by the higher tax authorities to ensure that due process of law has been followed** for initiating reassessments.

Section 292BC

- The EM states –
 - The grounds which have been taken are like absence of detailed reasoning or mechanical application of mind. Where detailed reasoning has been given, the assessments have been quashed on the ground that **seized material has not been submitted with the draft orders**. Even where affidavits have been given by approving authorities, the approvals have not been sustained. Many other grounds have also been taken like **time taken in providing the approval vis-à-vis the volume of seized material and the number of assessments**. Thus, assessments have been quashed without going into the merits of the case.
 - The Revenue has suffered on this account considerably despite the fact that administrative checks and balances were fully complied with and the due process of law had been properly followed. **Thus, legislative intent has not been correctly followed.**

Text of Section 292BC

- **Circumstances in which approvals by income-tax authority not to be invalid**
- 292BC Notwithstanding anything to the contrary contained in this Act or in any judgment, order or decree of any Court, for the removal of doubts, it is hereby clarified that any approval given by an income-tax authority in relation to any assessment, reassessment or re-computation proceedings under this act shall be deemed to be administrative or supervisory in nature and shall not be invalid or shall not be deemed to be invalid by reason of any insufficiency of the reasons recorded or by reason of any defect in the form or manner of its authentication or communication including whether digital signature have been appended to such approval or not, where such approval is granted electronically.

Analysis of Section 292BC

- Section applies from 1.4.2021
- Section is non-obstante anything contained in the Act or in any judgment, order or decree of any court
- Section states that it is for the removal of doubts and it clarifies what is stated therein
- Applies to any approval given by an income-tax authority
- The approval should be in relation to any assessment, reassessment or re-computation proceedings under this Act
- Such approval is deemed to be administrative and supervisory in nature (which means but for the deeming fiction it was not administrative and supervisory in nature)
- Such approval shall not be deemed to be invalid by reason of –
 - any insufficiency of reasons recorded;
 - any defect in the form or manner of its authentication or communication;
 - where such communication is granted electronically including whether digital signature have been appended to such approval or not.

Analysis of Section 292BC

- Form and manner would cover-
 - granting approval on order sheet instead of on the proforma
 - granting approval in a physical form where it ought to have been granted electronically
- It appears section 292BC may not save the following defects –
 - approval granted subsequent to issuance of notice
 - approval granted by two authorities
 - approval granted with information of a wrong person / particulars of a wrong person
 - absence of reasons
 - granting approval where seized material did not accompany draft order
 - approval granted by wrong authority
 - approval based on incorrect FACTS
- Concluded cases will not be affected by the provisions of section 292BC

Analysis of Section 292BC

- Since an approval covered by section 292BC is an administrative act, will it now be possible to contend that violations not covered / protected by section 292BC cannot be taken up in an appeal but need to be taken up in a writ – principle of judicial review

Manner prescribed must necessarily be followed

- It is well settled solitary principle that if statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. Where law prescribe a thing to be done in a particular manner following a particular procedure, it shall have to be done in the same manner following the provisions of law without deviating from the prescribed procedure. The said principle has again recently been reiterated and followed in multiple cases, wherein it has been held that there can be no estoppel against the law. If the law requires something to be done in a particular manner, then it must be done in that manner, if it is not done in that manner then it would have no existence in the eye of law. [Para 32] - **Kankanala Ravindra Reddy vs. Income-tax Officer [(2023) 156 taxmann.com 178 (TELANGANA)]**

Even administrative orders are subject to judicial review

- “There is another aspect of the matter which should also not be lost sight of. For the purpose of exercising jurisdiction under section 10 of the 1970 Act, the appropriate government is required to apply its mind. **Its order may be an administrative one but the same would not be beyond the pale of judicial review. It must, therefore, apply its mind before making a reference** on the basis of the materials placed before it by the workmen and/or management, as the case may be.” [Para 36 of the decision of the Apex Court in **Steel Authority of India Ltd. & Another v. State of West Bengal and Others; Order dated 25.9.2008; 2008 (14) SCC 589]**

Even administrative authorities are required to give reasons

- For the competent authority to take a decision, as the law understands it, there has to be “application of mind”. The question that needs to be addressed is whether endorsement of a noting made by subordinate officer can be ‘application of mind’. To show the same, it is generally prudent that reasons are recorded. .. **With time, it is now settled that administrative authorities are also required to give reasons for a decision made.**
- However, can an endorsement of the view taken by an undisclosed officer of the Ministry be said to be an ‘application of mind’ by the competent authority when the Minister is the sole authority? We think not. The decision had to be Top Down and not otherwise.” [Supreme Court in **Harinagar Sugar Mills Ltd. (Biscuit Division) & Another v. State of Maharashtra 2025 INSC 801]**

Rule of law means authority of law courts to test all administrative action by standard of legality

- In our constitutional system, the central and most characteristic feature is the concept of the rule of law which means, in the present context, **the authority of the law courts to test all administrative action by standard of legality. The administrative or executive action that does not meet the standard will be set aside if the aggrieved person brings the appropriate action in the competent court.** The rule of law rejects the conception of the Dual State in which governmental action is placed in a privileged position of immunity from control by law. Such a notion is foreign to our basic constitutional concept.” [Supreme Court in **Chief Settlement Commissioner, Punjab & Others v. Om Prakash & Others** [(1968) SCC OnLine SC 95 : (1968) 3 SCR 655 : AIR 1969 SC 33]



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