

# Demonetisation Assessment

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**SIRC OF ICAI**

# BACK GROUND

- Announcement by PM on 8<sup>th</sup> Nov. evening on T.V.
- Two prior occasions – 1946 & 1978
- Demonetisation & Black Money
- Only 6% or less is kept as cash

# BACK GROUND

- Notes in Circulation – Rs. 15.41 lac Cr.
- Rs. 15.3 Lac Cr. came into Bank -99.3% -  
As against the estimate of 80%
- Only 10,720 Cr. was not deposited
- Effort failed to remove B.M.

# BACK GROUND

- People were hired to exchange notes by big business Houses and Politicians
- Gold price went up to Rs. 45,000 from Rs. 35,900 per 10 gm.
- Back dated transactions were carried out by Mobile Phone sellers, Co-op Banks and several business people
- Hundies in Temples; Donations etc.,

# BACK GROUND

- SBNs were accepted for Municipal and local taxes – resulted in jump in collections
- No substantial increase in no. of Assesseees and collection of Tax.
- Sharp jump in Digital payments
- Sharp decrease in terrorist activities

# BACK GROUND

- 4 Lac Trucks stranded - Toll collections were suspended till Dec 2nd and SBNs were accepted from 2<sup>nd</sup> to 15<sup>th</sup> Dec.
- Demonetisation had a negative impact on stock market returns evidenced from NIFTY 50 and other NIFTY sectoral indices.
- Reduction in Industrial Output
- Agri. Sector was also heavily affected.
- Co-op Banks were not allowed to accept SBNs.



# BACK GROUND

- Exemptions:
- Petrol Pumps, Gas Agency, Transport Corpn. Etc.,
- In all 23 categories
- Train Reservation – peculiar situation

# BACK GROUND

- Restrictions on withdrawals from Bank Accounts – ATMs – till 12<sup>th</sup> Mar.
- Citizens suffered due to non-availability of their own money.
- Long Queue in ATMs and Banks
- Opposition Leaders claimed that more than 100 died in standing in the queues and denial of medical assistance.



## Effect in I.T. Proceedings

- Around 3 Lac notices were sent for those who have deposited Rs. 2 Lac and above.
- Out of 3 Lac 87,000 have not filed their Return of Income
- Directed to complete the assessment u.s 144 – Best Judgment.

# Information sought by Assessing Officers

- Opening Cash Balance as on 09.11.2016
- Cash deposits in all Bank A/cs. of the Assessee
- Out of cash deposits how much SBNs. with break-up of denominations and copies of pay-in-slips.

## Information sought by Assessing Officers – Contd.,

- Copies of Bank Statements/Pass Books
- Notices u.s 133 (6) were issued to Banks.
- Cash Books even from 01.04.2016

## Information sought by Assessing Officers – Contd.,

- Copies of Cash Bills/Receipts issued
- Name & Address and PAN of the parties, who have given cash.
- Copies of Ledger Accounts of the parties who have given cash.

## Information sought by Assessing Officers – Contd.,

- Cash Sales made during the same period in the previous year
- Even Cash Sales from 01.04.2016
- Cash withdrawals made from Bank from 01.04.2016.

## Information sought by Assessing Officers – Contd.,

- Confirmation Letters from the parties who have given cash with denominations.
- Summons to the parties who have given cash – Sworn-in- statements.

## Information sought by Assessing Officers – Contd.,

- Why huge cash balance is carried throughout the year?
- How can there be a spurt in sales during first week of November while there is no such sales in the past?



# Sources of Deposits to be explained

- Opening Cash Balance
- Cash Sales
- Recovery from Debtors
- Inheritance
- Out of withdrawals from banks on earlier occasions
- Loans.

## Sources of Deposits to be explained – Contd.,

- Cash Receipts of EMIs from customers by NBFC/Retail Traders.
- Cash Receipt of subscriptions from members of CHIT Companies.
- Past Savings
- Agricultural Income.

# PRECAUTIONS (That should have been taken while submitting the particulars)

- If Loans sec. 26gSS & 26gT (Rs. 20,000 or more can not be in cash)
- Advance for sale of Immovable Property.
- Past Savings
- Agricultural Income.

# PRECAUTIONS (That should have been taken while submitting the particulars)

- TCS u.s 206C and PAN – Bullion/Jewelery Traders ( bullion exceeding Rs. 2 Lac and jewellery exceeding Rs. 5 lac)
- Sellers who receive cash above Rs. 2 Lac for sale of goods.

# HOW ASSESSMENTS WERE COMPLETED

- U.S 68 – sum found credited in the Books of Account- Explanations with concrete proof were rejected
- The receipts which appear in Books were already audited (in some cases) and represents sales or receipts from parties, to whom sales were made which form part of the Turnover.
- Taxing these receipts is nothing but Double Taxation and again gross receipts can not be taxed without allowing deduction for the cost incurred.

# HOW ASSESSMENTS WERE COMPLETED

- U.S 69A – as though the sum was not recorded in the Books of Account, who are not required to maintain Books of Account, who offer income under Presumptive Basis.
- Assesseees, whose Gross Receipts are less than Rs. 10 Lacs or whose Total Income is less than Rs. 1.20 Lacs.

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# HOW ASSESSMENTS WERE COMPLETED

- Taxes were levied u.s 115 BBE@ 60% plus 15% Surcharge
- Sec 115BBE was amended on 15.12.2016 with retrospective effect from A.Y. 2017-18 as per Taxation Laws Amendment Bill 2016. Higher Tax Rate can not be made applicable for the transactions made prior to amendment.

# HOW ASSESSMENTS WERE COMPLETED

- Penalty Proceedings u.s 270AAC were initiated to levy penalty @5% of the demand.
- Penalty Proceedings u.s 270A were also initiated simultaneously in certain cases to levy penalty @ 50% of the tax for under reporting or 200% of the tax for misreporting.
- There is specific clause in section 270A that this section can not be invoked if proceedings are initiated u.s 270AAC.

# RECTIFICATION AND APPEAL

- Rectification Petitions are not attended since they have time up to 6 months
- Stay Petition are rejected; 20% is to be paid and apply for stay of the balance.
- First Appeal with CIT (Appeals)

# RECTIFICATION AND APPEAL

- If first appeal is dismissed next appeal with ITAT
- The stay, if any granted would expire and fresh stay petition to be filed with ITAT.
- Writ may be filed in High Court to get stay if the demand is huge; Bank Guarantee or property as surety may be required.

# GROUNDS OF APPEAL

- No specific section in Income Tax Act to levy tax on the receipt and deposit of SBNs if source is proved.
- Income from illegal activities alone can be taxed; not the receipts.

# GROUND OF APPEAL

- Assessing Officer can not assume that the cash held might have been used for any other purpose; it is to be proved.
- Cash receipts against which goods were supplied afterwards can not be taxed.

# GROUNDS OF APPEAL

- Mere existence of time gap between cash withdrawal & cash deposits can not be made basis for addition u.s 68 .
- No provision in the Act requiring that cash once withdrawn has to be re-deposited immly. If not utilized.



# CONCLUSION

- It is believed that many high pitched assessments were made in order to project that the Demonetisation has resulted in huge demand in Direct Taxes.
- Such orders will not withstand in higher forums.
- There are number of cases in favour of the Assessee.
- A list of cases is also given for the guidance of the members.

**THANK YOU**

**ANY QUESTIONS ?**