

I.T ASSESSEMTNS & DEMONETIZATION

Background

On 8th November 2016 at 08.15 p.m. the scheme of demonetising the Rs. 500 & Rs. 1,000 currency notes was announced in T.V. by the honourable P.M. of India. Earlier the Indian government had demonetised banknotes on two prior occasions—once in 1946 and once in 1978—and in both cases, the goal was to combat tax evasion via "black money" held outside the formal economic system.

In 2012 itself, the Central Board of Direct Taxes recommended against demonetisation, saying in a report that "demonetisation may not be a solution for tackling black money or shadow economy, which is largely held in the form of benami properties, bullion and jewellery." According to data from income tax probes, black money holders kept only 6% or less of their wealth as cash, suggesting that targeting this cash would not be a successful strategy

Public were allowed to exchange the old note for lower denomination or new Rs. 2000 notes till 24th November and certain categories of business houses/people such as Petrol Pumps, Gas Distributors, Govt. Transport Corpns. etc., (in total 23 categories) were allowed to accept old notes till 15.12.2016.

Restrictions were imposed for withdrawal from Bank Accounts directly or through ATMs and the public had suffered heavily on account of non-availability of their own money for their day-to-day operations.

Rs. 15.3 Lakh Crore i.e 99.3% of the notes in circulation of Rs. 15.41 Lakh Crore were deposited in the Banks and only Rs. 10,720 Crores were not deposited leading analysts state that the effort had failed to remove the black money from the economy.

Effect in Income Tax Proceedings

- Around 3 Lac Notices were sent to those who have deposited Rs. 2 Lakhs or more from 09.11.2016 to 31.12.2016
- Out of 3 Lac 87,000 have not filed their return of income – Directed to complete the assessments u.s 144 – Best Judgement.

Information sought by Assessing Officers:

- Opening Cash Balance as on 09.11.2016
- Cash Deposits made from 09.11.2016 to 31.12.2016 in all the Bank Accounts of the assessee
- Out of cash deposits how much SBNs were deposited with copies of pay-in-slips with break-up of denominations
- Copies of Bank Statements/Pass books
- Notices u.s. 133(6) were issued to the Banks calling for the information regarding cash deposits made and deposit of SBNs
- Cash Book even from 01.04.2016
- Copies of Cash Bills/Cash Receipts issued
- Name and address with PAN of parties, who have given cash during the period
- Ledger Account Copies of Sundry Debtors who have given cash
- 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
- Confirmation Letters from the parties who have given cash with denominations.
- Summons to the parties and sworn-in-statements from them for having given SBNs.

- Why huge cash balance is carried in Books of Account (need for the same) and why loans were taken when there is sufficient cash balance? or why loans were not repaid.
- How can there be a spurt in sales during the first week of November while there are no such sales during the past or in the corresponding earlier period?

Sources of deposits are to be explained:

- ❖ Opening Balances
- ❖ Cash Sales
- ❖ Recovery from Debtors
- ❖ Inheritance
- ❖ Out withdrawals from Banks on earlier occasions
- ❖ Loans
- ❖ Cash receipt of EMIs from customers by NBFC/Retail Traders
- ❖ Cash receipt of subscription by members of the CHIT Coy.
- ❖ Past Savings
- ❖ Agricultural Income

Precautions that should have been taken while submitting particulars:

- ⊕ Assessee should be cautious while making claims of sources as loans or advances towards property transactions as sections 269SS and 269T prohibits cash transactions in excess of Rs. 20,000 for accepting or advancing loans and deposits or in relation to transfer of an immovable property, whether or not the transfer takes place.
- ⊕ Provisions with regard to collection of tax at source under section 206C and quoting of PAN of the buyers have to be borne in mind by bullion traders who make cash sales above specified limits (bullion exceeding

Rs. 2,00,000 and jewellery exceeding Rs.5,00,000) and by sellers who receive sale consideration in cash exceeding Rs. 2,00,000 for sale of any goods.

How Assessments were completed:

- ✚ Under section 68 – sum found credited in the Books of Account and the explanation given by the assessee with proof are rejected without stating any reason for rejection.
- ✚ The receipts, which appear in the Books of Account, which are taxed u.s 68, had already form part of the income of the Assessee, whose books might have been audited in certain cases, as sales in the Turnover. Taxing this is nothing but double taxation and how gross sales can be taxed without allowing cost of purchase and how receipts from Debtors to whom sales were made and such sales form part of the Turnover, can be taxed as unexplained credit is a big question.
- ✚ Under section 69A – as though the sum was not recorded in the Books of Account for those who are not required to maintain Books of Account such as Assesseees, who offer income under presumptive basis or whose gross receipts is less than Rs. 10 Lakhs or whose total income is less than Rs. 1,20,000/-
- ✚ Tax is calculated at 60% under section 115BBE plus 15% Surcharge
- ✚ Penalty under section 270AAC is initiated for levying penalty of 10% of the demand
- ✚ It is specifically given in section 270AAC that if penalty is levied under 270AAC, penalty u.s 270A should not be imposed.

✚ But penalty proceedings under section 270A is also initiated simultaneously for levying penalty @ 50% of the tax payable for under reporting or @ 200% of the tax payable for misreporting.

- Rectification and Appeal

- ✓ If there are errors, rectification petition filed are not attended immediately since they have time up to six months.
- ✓ Stay petitions are rejected
- ✓ At least 20% tax is to be paid
- ✓ There are number of cases in favour of the Assessee because there is no specific section in the Income Tax Act to levy tax on the receipt and deposit of SBNs in Banks so long as there is evidence to prove the source.
- ✓ Earlier demonetisations were through ordinances and because of this reason it became a law of land at that point of time. In Ordinance of 1978, it was specifically mentioned in section 4 that any transactions after a specified date in demonetised currency shall be illegal accordingly made punishable under IPC and other applicable Law but this is not the position of current demonetisation. Demonetisation in 2016 was made through notification and certain power vested in section 26 under RBI Act was exercised. RBI Act nowhere states that a person cannot deal in illegal tender.
- ✓ The government has introduced demonetisation through notification in RBI Act and subsequently various modification were made in the said notification but no such changes were made in Income Tax Act. In various cases it has been decided that income from illegal activities is also taxable under Income Tax Act as regular income of the

assessee. On the same analogy one can argue that acceptance of illegal tender is prohibited by the RBI but it cannot be taxed under section 68 if other parameter and genuineness of the transactions are proved.

- ✓ It can also be argued that sale purchases of goods and services are governed by Indian Contract Act and when both the parties are eager to execute those contract and they do not have to go court for execution of contract then consideration paid in illegal tender should not be questionable.
- ✓ Further SBN Act got the assent of the President of India on 27th Feb 2017 and as per section 5 of the Act nobody should hold the SBNs after 31.12.2016 other than those collecting the same as a hobby and that too up to certain limits. Hence holding or depositing the same till 31.12.2016 is not an offence.
- ✓ One may also argue that retrospective changes in section 115BBE through taxation law amendment bill 2016 cannot be made retrospective and high tax rate can be made applicable after the date of taxation law bill promulgated in the gazette of India and cannot be made applicable to the transaction made prior to amendment. It is worthwhile to mention here that section 115BBE was amended on 15/12/2016 with retrospective effect.
- ✓ In all such cases if transactions are genuine and it is firm belief that court will deliver his favour in the assessee and get them relief from rigours of section 115BBE. Therefore in demonetisation cases though addition is generally made by the Income Tax department but it is very hard for them to stick in appellate proceeding.

- ✓ If the first appeal is dismissed at the time of appeal before ITAT the petition for stay of collection of taxes is to be made with ITAT since the stay, if any already given, would hold good till disposal of appeal by CIT(Appeals) only. If the demand is huge writ can be filed in High Court to stay the collection of taxes
- ✓ Assesses may be directed to give Bank Guarantee for the demand, which can be obtained from Bank or assign property in the form of fixed assets to the Department as surety.