



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

AMRITSAR BRANCH OF NIRC STUDENTS NEWSLETTER OCTOBER 2020

FRESH CLAIM OF DEDUCTION IN PROCEEDINGS U/S 153A
& ANNUAL RETURN UNDER GST



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- सर्व मंगला मांगल्ये – To auspiciousness of all auspiciousness
शिवे – to the Good
सर्वार्थ साधिके – to the accomplisher of all objectives
शरण्ये – to the Source of Refuge
त्र्यम्बके – to the mother of the three worlds.
गौरी – to the Goddess who is Rays of Light
नारायणी – Exposer of consciousness
नमोस्तुते – We bow to you again and again. We worship you.



From the Desk of the Chairman.

Dear Students,

जय श्री राम

I hope that this communication finds you and your loved ones safe & healthy in these unprecedented times. The key learning of COVID-19 and resultant Lockdowns comes in the form of a shift to the virtual world. The shift from personal meetings to video calls and seminars to webinars is a from normal to the new normal. We are likely to see changes in working of branches as well as ICAI due to brutal pandemic.

This issue of E-Newsletter covers “Fresh/Revised claim of Deduction in Proceedings under 153A & GST Audit”. I am grateful to our Senior member & Taxation Committee's Chairman CA Padam Bahl Ji, for sharing valuable content covering several instances where new claim share arises u/s 153A along with various Judgements. GST is one tax regime impelled by government to promote a unitary basis of transacting business in India. It enables assessee to Self-assess his tax liability and file timely returns to government without any major intervention of any tax official. As the regime majorly stresses on Self-assessment procedures it puts up a need for rigorous Audit –Mechanism, which will ensure effective measurement and compliance of all the legal associated provisions by every Taxpayer.

Friends, it fills my heart with great pride in informing you that we are in the process of signing MOU with Khalsa College, Amritsar(KCA) and our parent body ICAI for extending the necessary support to deliver guest lectures to the students of KCA on the technology trends and in house requirements. As a result, ICAI Amritsar Branch may depute its personnel as visiting faculty at KCA to teach any subject/specialized course for the students of KCA. Draft Memorandum has already been sent by KCA and ICAI required changes in some clauses by the respective committee. We are trying our level best to get it implemented so that our GST expert and other faculties can share their valuable knowledge with KCA Students. Thereafter we will follow with other Educational Institutions with similar MOU's.

We all need a sense a festivity in our lives considering the times we have all evolved from, as we begin with the festive season, I wish you all Happy Navratri and Vijaydashmi. Let the spirit of love gently fill our heart and homes. May the victory of good over evil inspire you towards your own victory.

Stay Safe Stay Healthy

October, 2020

With Warm regards.
CA SANJAY ARORA
B.Com., F.C.A., D.I.S.A., (ICAI)
Chairman, 2020-21
Amritsar Branch of NIRC of ICAI

Chairman



From the Desk of the Secretary...



Dear Students,

Warm Greetings,

First of all, We with immense delight present our members a special edition on the Topic one- Fresh/ Revised Claim of Deductions in proceedings u/s 153A of Income Tax Act, 1961 and other on GST Audit for the month of October 2020.

As per section 153A of the Income Tax Act, in the case of a person where a search is initiated under section 132 the Assessing Officer shall issue notice to file return of Income and assess or reassess the total income of six assessment years. Now question arises that during the assessment proceeding u/s 153A, can assessee claim fresh claims of deductions? Which is held as YES in some land mark judgements of various Courts. One of them is held by Bombay High court in case of PCIT Vs JSW Steel Ltd (Bombay High Court) Dt 05.02.20. This topic has been discussed in detail by our hon'ble Senior members.

Our other topic is GST Annual return and Audit. As we know the Govt has recently extended the due date of filing of Annual GST return and audit to 31st Oct. 2020. Many of our members are busy in GST Audit for the F.Y. 2018-19. Section 35 of the CGST Act, deals with the maintenance of books of accounts, documents and records. Section 35(5) read with Section 44(2) of the CGST Act and the corresponding Rule 80(3) of the CGST Rules relates to audit. In terms of the said section / rule, every registered person whose turnover in a financial year exceeds five crore rupees has to get his accounts audited by either a Chartered Accountant or a Cost Accountant for the F.Y. 2018-19. I hope in this financial year complications will be less as compared to the GST audit for the preceding year. I hope both the topics in this news letter will a knowledge boosters for all members and students.

Members, Now Covid pandemic is slowly going down and Central Govt has launched unlock-5 and most of the business activities are being continued smoothly. We are hopeful the Covid will end soon and we have to accelerate our professional working alongwith keeping ourself safe and healthy, as due dates of Tax Audit and GST Audit are approaching. In October we are filing or has filed MEF form of ICAI also.

Dear Students,

Most of you will be busy in your studies as Exams will be held in next month of Novemebr and hopefully ICAI has completed his arrangements for upcoming exams. ICAI is very much promising this time to conduct exams. So all of you should concentrate on your studies with your best efforts. Do not leave any stone unturned to crack the upcoming exams. Forget the future and keep your eye on the upcoming exam only. As I told ealier You have to justify the quote "Accept the challenges so that you can feel the exhilaration of victory". Every one of you is going through a challenge to crack this a very noble Professional CA course. So keep going and circumstances will be in your favour. Best of luck for the Nov 2020 Exams.

Keep yourself safe and stay healthy in the pandemic.

With Warm regards.

Sd/-

CA Shashi Pal

Editor in Chief

Secretary, ICAI Amritsar Branch

October, 2020

Secretary



From the Desk of the Chairperson.... 



Dear Students,

It gives me immense pleasure on the auspicious occasion of Navaratri to present “October 2020 edition of e-Newsletter” on Fresh/ Revised claim of deduction in Proceedings u/s 153A & GST Audit *

Gear up for November 2020 examination :

As you prepare for the forthcoming examination, you should pay due attention to the subject details, concepts and complexity of the topics. This will help you to segregate the theoretical portions from the practical one in each chapter. You must work out separate strategies to prepare for each of these portions. Theory can be best prepared by reading the contents intently a few times, carefully interpreting the technical terminology and its usage. Notes can be prepared to jot down the vital aspects to be used later for revision closer to the exams. Practical portion can be best studied by understanding the underlying formula used for problem solving, analysing each problem down to the basic steps in its solution and practising as many problems as possible to gradually maximize accuracy and minimize the time to attempt.

You are advised to attend the on-going Free Live Virtual Coaching Classes to gain insightful details in the subject matters and to learn from the experts. Recorded lectures can also be viewed on our You tube Channel or Digital Learning Hub as and when required. Besides the study material, you should also refer to the Subject Capsules that feature every month in this publication to get tips and cues about presenting your answers with clarity and precision.

As students of this coveted course, you must remember the words of Leonardo Da Vinci, one of the greatest painters of all time “Learning is the only thing the mind never exhausts, never fears and never regrets”. So, keep learning! All the best

October, 2020

Thanks & Regards!
Sd/-

CA Palak Bansal
Chairperson
NICASA Amritsar Branch.

Chairperson



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OUR MENTOR

Mr. D.N. Sehgal embarked on his journey to become a Chartered Accountant when he was a minor and started doing his Articleship, even before the age of 18 years and became part of the fraternity in 1960 and after doing a job, focused solely on practicing from 1969. He struggled and sacrificed and became a master of Income Tax and has been actively engaged in arguing matters before the Amritsar as well as the Chandigarh Income Tax Commissionerate.

Simple living and high thinking is not just a proverb but a way of life for him. His life is a manifestation of principals such as honesty, modesty, truth, simplicity, generosity, to name a few, and follows them, not only in day-to-day life but also, his career. He advocates and preaches the same to his off springs as well as the young aspirants.



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OUR MENTOR

Sh. S.K. Gupta is practicing since 24-09-1969. He specialized in litigative practice in direct and indirect taxes. He has been instrumental in bringing about many trader friendly changes in direct and indirect taxes. He has been actively engaged in implementing assessee friendly measures through Tax Payers Committee under the Amritsar Income Tax Commissionerate.

His life is manifestation of principals being followed not only in percept but also in practice of daily life. He has touched and shaped many a lives to motivate them to follow the path of truthfulness in professional and personal life.



GST AUDIT



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The introduction of the Goods and Services Tax regime is a revolutionary step in the domain of commodity and services tax, which has brought about a paradigm shift in the methodology of levy and collection of taxes. It is an internationally recognized multipoint tax system, providing for levy of tax on goods as well as services on the value addition occurring at every stage of business activity. Today, it can be said that the GST, being a self-assessment tax, requires the introduction of audit procedures for ensuring its proper compliance. To serve this purpose GST Audit has been introduced as GSTR FORM 9C to ensure the correctness of GST records, returns and other necessary documents.

What is GST Audit ?

Audit under GST means inspection of returns, records and other documents furnished by the taxpayer. GST Audit is carried out to check whether the turnover, taxes paid, ITC refund claimed and ITC availed mentioned in his annual report are true and fair or not. Moreover, a **GST audit** also helps in evaluating whether the taxpayer is compliant with the GST provisions.

Applicability of Audit under GST

Every registered person must get its accounts audited if the aggregate turnover during FY exceeds Rs. 2 Cr from sale of goods or services and in addition to GSTR FORM9, he shall also file GSTR FORM 9C alongwith the reconciliation statement and certification of an audit. Calculation of turnover shall be PAN based i.e. all sale of goods/ services shall be taken for computing the limit of Rs. 2 Cr.

However, due to the impact of Pandemic COVID-19 the limit for eligible turnover was increased from **Rs.2 Cr to Rs. 5 Cr.**

GST audit limit is same for all registered taxpayers, i.e. no separate limit is specified for special category states or UTIs

Exception- Provision for GST audit will not be applicable in case Central Government/ State Government/ Legislative Assembly in case they are subject to audit by CAG or any Statutory Auditor appointed for auditing the accounts of Legislative Assembly.

Requirement of GST Audit-

GST Audit is required for the following reasons-

1. GST is the self-assessment tax regime so GST audit is required for ensuring that tax payer has correctly assessed his liability.
2. It involves examination and evaluation of records, GST returns and other related documents.
3. To obtain reasonable assurance and ensure that financial statements are free from any material misstatements.

Furnishing of Documents under GST Audit-

1. Annual Return
2. Copy of Audited Annual Accounts
3. Copy of reconciliation Statement

Types of GST Audit-

Under section 35 (5) of GST law, three types of GST audit is being specified-



Sr. No.	Name of Audit	Prescribed Authority	Condition
1.	Based on Turnover	Chartered Accountant/Cost Accountant	Turnover Exceeds Rs 2 Cr.
2.	General Audit	GST Commissioner or any other officer authorized by him	On order passed by Commissioner, giving prior notice of 15 days.
3.	Special Audit	Chartered Accountant/Cost Accountant nominated by Commissioner	On order passed by Deputy/Assistant Commissioner with prior permission of Commissioner.

Calculation of Aggregate Turnover under GST

For computing the aggregate turnover, following sale shall be included-

1. Value of all inter-state taxable supply
2. Value of all intra- state taxable supply
3. Value of all exempt supplies
4. Value of all export supplies
5. Job work supplies on principal to principal basis
6. Zero rated supplies
7. Any supply to agent/ job work on behalf of principal

For computing the aggregate turnover, following sale shall be excluded-

1. Taxable supply on which reverse charge is applicable
2. All taxes and cess paid under GST
3. Goods supplied and received back from job work

GST Audit Procedure Rules 2017

- The period of audit to be conducted under subsection(1) under section 65 shall be a financial year or multiples thereof.
- Once it is decided to undertake audit of a registered person, the proper officer shall issue a notice in FORM GST ADT-01 in accordance with provisions of section 73 sub-section (3).

- The proper officer authorised to conduct audit shall with the assistance of the team of officers, verify the documents, records and books of accounts maintained and returns furnished under provisions of the Act, can verify the accuracy of stated turnover, exemptions and deductions claimed, the rate of tax applied in respect of the supply of goods or services or both, the input tax credit availed and utilised, refund claimed, and other relevant issues and record the observations in his audit notes.
- The proper officer may inform the registered person of the discrepancies noticed, or any errors observed in audit and may intimate the person to file his reply.
- Concluding the audit, the proper officer within 30 days shall inform the audit scrutiny/findings to the registered person in FORM GST ADT -02 (Section 65(6))

Special GST Audit Rules

- In cases where any officer below the rank **Assistant Commissioner**, is of the opinion that any value declared or credit availed is not appropriate by the registered person, he shall issue a direction in Form GST ADT- 03 to to get his records audited by a **Chartered Accountant** or **Cost Accountant**.
- The Chartered Accountant or Cost Accountant so nominated has to submit a report of such audit within 90 days duly signed and certified by him to Assistant Commissioner. On application with sufficient reason, the said professional nominated or the registered person the period can be extended from 90 days by Assistant Commissioner.



- The expenses of the said examination and audit of records including the remuneration of Chartered Accountant/Cost Accountant so involved shall be determined and paid by the Commissioner.
- Concluding the special audit, the registered person shall be informed of the omissions/findings of special audit in FORM GST ADT -04.
- **Mandatory Internal Audits:**
 - GST authorities have now begun issuing show-cause notices to business houses for strict compliance of GST norms. Internal audit of the GST records could bring succor to a business in order to run check on the operating efficacy of internal financial controls and know important areas of risk and finally adopt necessary measures to minimize risks.
- **GST Audit Checklist:**
 - The following are the mandatory GST Audit Checklist that requires strict compliance:
 - 1. Checking of GSTR 3B in relation to GSTR 1 & GSTR 2A:
 - Two important points get covered under this heading:
 - **a) Interest and penalties in GST Act:**
 - The recipient could claim extra input tax credit. And for this, it is compulsory for him to make a payment of interest @ 24%. This is applicable on the excess tax amount. Auditors need to reconcile the GSTR 3B with GSTR 2A to make sure that the organization would not claim extra tax credit. If it has been paid in excess, company would pay interest and the tax amount on the applicable date. When the GST authorities come to know about the data gaps between GSTR 3B and GSTR 2A, the tax payers might have to pay the interest and penalty

- **b) Amendment in GSTR:**

- When the auditor comes to know about the data gaps, he would recommend the management to make amendment of the invoices at summary levels in GSTR 1.
- **2. Checking particulars of invoice:**
 - It is very clear that there are specific rules related to the details in the invoices. If the format of the invoice varies, he would advise the management to make amendment of the invoice and include the requirements of the GST rules.
- **3. Reversal of input tax credit for non-payment in 180 days:**
 - At this stage the GST auditor has to check the following details:
 - a) Difference between invoice date and date of payment. And this would not exceed 180 days.
 - b) The amount of payment needs to remain equal with invoice amount and GST. If the payment amount is less than invoice amount plus GST, the input tax credit to the extent of short payment would get reversed.
- **4. Reversal of input tax credit for non-business use or for exempted goods/services:**
 - If the person has taken credit for invoices which are used for non-business purposes then it should be taken as per GST Rules and need to be reversed. If the credit is taken for such goods/services which are partially used for taxable and non-taxable supplies then only eligible amount credit has to be taken and balance has to be reversed as per GST Rules.

Obligations of the Auditee

The taxable person will be required to:

1. Provide the necessary facility to verify the books of account/other documents as required



CONCLUSION

Thus, there is no specific mention of methodology of audit or the manner of reporting either in the Act or the Rules, except for a certificate format which is notified as part of reconciliation statement in Form GSTR 9C. The GSTR-9C must be digitally signed by the GST Auditor and must report all discrepancies or liabilities in filing any of the GST returns during the financial year. All additional liabilities arising out of the reconciliation exercise and GST audit must be reported and certified by a CS in GSTR-9C. The GSTR-9c is the only yardstick or indicator for GST Authorities to measure the correctness of GST returns filed by taxpayers during a given financial year.



Fresh/ Revised claim of deduction in Proceedings u/s 153A

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What is Section 153A?

Sec 153A (1) :Notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, in the case of a person where a search is initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132A after the 31st day of May, 2003, the Assessing Officer shall— (a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139; (b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made : Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years: Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this sub-section pending on the date of initiation of the search under Section 132 or making of requisition under Section 132A, as the case may be, shall abate.

Explanation.—For the removal of doubts, it is hereby declared that — (i) save as otherwise provided in this section, sec. 153B and sec. 153C, all other provisions of this Act shall apply to the assessment made under this section; (ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year. Rule 112F - Assessing Officer shall not be required to issue notice for assessment or reassessment of the total income for six assessment years immediately preceding the A.Y The aforesaid rule was introduced with a view to reduce infructuous and unnecessary proceedings under the Income Tax Act, 1961 in cases where a search is conducted u/s 132 or requisition made u/s 132A and cash or other assets are seized during the election period, generally on a single warrant, and no evidence is available, or investigation required, for any assessment year other than the assessment year relevant to the previous year in which search is conducted or requisition is made.

Salient Features of Sec 153A

1. Overriding effect on sections 139, 147, 148, 149, 151 and 153.
2. AO shall issue notice to the person searched to file Return of Income for six Assessment Years (and for the relevant assessment year or years*) immediately preceding the year in which the search is conducted.
3. AO to assess/ reassess total income for six assessment years (and for the relevant assessment year or years*)



4. Assessment/ reassessment in relation to any assessment year falling within the period of such six assessment years, (and for the relevant assessment year or years*) as pending on the date of initiation of search shall abate.

5. Sec. 153A contemplates issue of notice for 6 years (and for the relevant assessment year or years*) preceding the search but not for the year of search or requisition and thus no return is required to be filed for the year of search u/s 153A. Only regular return u/s139 is to be filed.

* Inserted by Finance Act, 2017, i.e. 1-4-2017.

6. No time limit prescribed for issue of notice u/s 153A.

7. Section mentions about issue not service of notice.

8. Section 153A speaks of the prescribed time and prescribed particulars, the rules & forms are yet to be prescribed.

This section also provides that assessment in respect of the assessment year relevant to the preceding year in which the search is conducted under sec. 132 or requisition is made under sec 132A shall be completed within a period of two years from the end of the financial year in which the last of the authorizations for search under sec. 132 or for requisition under sec. 132A as the case may be was executed.

It also provides that in computing the period of limitation for completion of such assessment or reassessment, the period during which the assessment proceedings are stayed by an order or injunction of any Court; or the period commencing from the day on which the AO directed the assessee to get his accounts audited under sec. (2A) of sec. 142 and ending on the day on which the assessee is required to furnish a report of such audit under that sub-section, or the time is taken in reopening the whole or any part of the proceeding or giving an

opportunity to the assessee of being reheard under the proviso to sec. 129 or in a case where an application made before the Settlement Commission under sec. 245C is rejected by it or is not allowed to be proceeded with by it, the period commencing on the date on which such application is made and ending with the date on which the order under sub-sec. (1) of sec. 245D is received by the CIT under sub-sec. 20 of that section, shall be excluded. If, after the exclusion of the aforesaid period, the period of limitation available to the AO for making an order of assessment or reassessment as the case may be is less than sixty days, such remaining period shall be extended to sixty days and the period of limitation shall be deemed to be extended accordingly.

The search proceedings under section 153A are for the benefit of the revenue and therefore any fresh claim is not allowable u/s153A of the act, as it is seen in following cases:

Jai Steel (India), Jodhpur v. Assistant Commissioner of Income-tax [2013] 36 taxman 523 (Rajasthan);
Charchit Agarwal v. Assistant Commissioner of Income-tax, Central Circle 12, New Delhi [2009] 34 SOT 348 (Delhi).

From the assessee perspective, the primary contention to substantiate such fresh claim is that Section 153A mandates that the assessments or re-assessments pending on the date of initiation of search would stand abated and return of income filed by the person concerned for the six assessment years in terms of Section 153-A(1)(a) would be construed to be a return of income under section 139 of the Act. Therefore, in view of the second provision to section 153A of the said Act, once assessment got abated, it meant that it was open for both the parties, i.e. the assessee as well as revenue to make claims for allowance or to make disallowance, as the case may be. That apart, the



assessee could lodge a new claim for the deduction, etc. which remained to be claimed in his earlier/regular return of income. This is so because the assessment was never made in the case of the assessee in such a situation. It is fortified that once the assessment gets abated, the original return which had been filed loses its originality and the subsequent return filed under section 153A of the said Act (which is in consequence to the search action under section 132) takes the place of the original return. In such a case, the return of income filed under section 153A(1) of the said Act, would be construed to be one filed under section 139(1) of the Act and the provisions of the said Act shall apply to the same accordingly. A return filed under Section 153A takes the place of the original return under Section 139, for the purposes of all other provisions of the Act. Once the A.O. accepts the revised return filed under Section 153A, the original return under Section 139 abates and becomes non-est.

In other words, in view of the second proviso to section 153A (1) of the said Act, once assessment gets abated, it is open for the assessee to lodge a new claim in a proceeding under section 153A(1) which was not claimed in his regular return of income, because the assessment was never made/finalized in the case of the assessee in such a situation.

In brief it can be said that under Section 153A, Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place. In view of the second proviso to section 153A(1) of the said Act, once assessment gets abated, it is open for the assessee to lodge a new claim in a proceeding under section 153A(1) which was not claimed in his regular return of income because the assessment was never made/finalized in the case of the assessee in such a situation.

Happy Learning!

Source: Income tax (Bare Act), Books, blogs and articles, Google.com.

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