

Scrutiny assessment under the Income-tax Act with special reference to Annual Information Returns

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Introduction

1.1 The scrutiny of returns had been a regular measure to check tax evasion since long. The collection of information for the purpose of making enquiries in course of such scrutiny assessments is as much important as the assessment proceedings itself. There are various provisions in the Income tax Act, 1961 for the purpose of collecting information directly from the assessee as also from the others for the purposes of making such enquiries at various stages of assessment proceedings. The findings of such enquiries are utilized for the purposes of completing the assessment proceedings in the case of a particular assessee.

1.2 In recent years, the manner of collecting information for the purpose of making an enquiry prior to the commencement as also during the assessment proceedings has undergone paradigm shift. Now the legislature is empowering the Department with various provisions so as to enable it to collect information, which are neither specific to a particular assessee nor have any direct link to a particular income at the initial stage. In the past, the Courts have taken unanimous views that there must be an application of mind to the information collected and its relevance in assessment of income of an assessee.

1.3 Recently, for the purposes of widening the tax base and utilization of relevant information for the proper assessment of income, a new provision of Section 285BA has been inserted by the Finance Act, 2003 w.e.f. 01.04.2004, which was later on substituted by the Finance (No.2) Act, 2004 w.e.f. 01.04.2005. These provisions regarding furnishing of various categories of information in respect of specified financial transactions have been referred to as “*Annual Information Return*” commonly known as AIR. The application of information collected from the huge pool of information, in case of a particular assessee, has been a daunting task, and has thrown open various issues and practical problems, which are the subject matter of discussion in the present paper.

Scrutiny assessment

2. In common parlance, the ‘scrutiny assessment’ refers to an assessment made under section 143(3) of the I.T. Act, 1961. Though the provisions of CHAPTER XIV: PROCEDURE OF ASSESSMENT, from sections 139 to 158, are not subject matter of discussion in this paper, it is pertinent to discuss some of the provisions relating to scrutiny assessments, enquiries before assessment and collection of information for this purpose. These provisions relating to assessment are contained more specifically in various clauses and sub-sections of sections 143 and 144 and with

reference to reassessment in section 148 read with section 147 of the I.T. Act, 1961. The salient features of these provisions are being discussed, in brief, as under:-

(1) **Section 143: Assessment**

This section consists of five sub-sections and lays the procedure for initiation and completion of assessment proceedings. The provisions are being summarised as under:

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(a) **Sub-section (1), (1A), (1B), (1C)**

While sub-section (1) of section 143 refers to the processing of return furnished under section 139 or in response to notice under section 142(1) and the manner thereof sub-sections (1A), (1B) and (1C) provides for making of scheme for the purposes of sub-section (1), *i.e.* processing, by the Board and the formalities in this respect.

(b) **Sub-section (2)**

Sub-section (2) provides for the issue of notice under certain circumstances, in cases, where the return has been furnished under section 139 or in response to a notice under sub-section (1) of section 142. Clause (i) of sub-section (2) related to '*limited scrutiny*' and provides that the Assessing Officer shall serve on the assessee a notice, where he has reason to believe that any claim of loss, exemption, deduction and allowance or relief made in the return is inadmissible, and require the assessee to produce the relevant evidences or particulars specified therein. This provision has since been discontinued and no such notice can be served on the assessee after 1st day of June, 2003.

Clause (ii) of sub-section (2) provides that Assessing Officer shall serve notice on the assessee either to attend his office or to produce or cause to be produced any evidence on which the assessee may rely in support of the return, if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the taxes in any manner. The *Proviso* to clause (ii) further provides that no notice shall be served after the expiry of six months from the end of the financial year, in which return has been furnished. It may be noted that impetus of this limitation provision is on the '*service*' of notice and '*issue*' of notice has no relevance.

(c) **Sub-section (3)**

Sub-section (3) provide for making of assessment and determination of total income and the tax liability after hearing the relevant evidences and other particulars. While clause (i) provides for making the assessment in the case of

'limited scrutiny', clause (ii) provides for passing an order in writing making assessment of total income and determining the sum payable by the assessee. The first *proviso* of this clause provides that no order making an assessment shall be made by the Assessing Officer without giving effect which are required to furnish return of income under sub-section (4C) of section 139 to provisions of section 10 in specified cases unless the Assessing Officer has intimated the Central Government or the prescribed authority about any contravention and the approval so granted have been withdrawn or rescinded. The second *proviso* further provides for giving reasonable opportunity to show-cause against the proposed withdrawal of notification or approval in the case the Assessing Officer is satisfied that the activities of such institution are not in accordance with all or any of the conditions subject to which the approval has been granted.

(d) **Sub-section (4)**

Sub-section (4) provides for the credit of prepaid taxes or the sum payable by the assessee in accordance with the regular assessment made under sub-section (3) of Section 143 or Section 144 of the I.T. Act, 1961.

(2) **Section 144: Best Judgment Assessment**

This provision deals with the situation where the assessee fails to furnish return under section 139 or fails to comply with the notice and direction issued under sub-section (1) or (2A) of Section 142, or fails to comply with the notice under sub-section (2) of section 143 and provides that under these circumstances, the Assessing Officer shall make assessment of the total income to the best of his judgment after taking into account the material, which he has gathered. It further provides for giving an opportunity of being heard to assessee before making the assessment to the best of his judgment. The first *proviso* again provides for giving such opportunity and manner of such opportunity.

(3) **Section 148: Issue of notice where income has escaped assessment**

This section provides that the Assessing Officer shall serve on an assessee a notice before making the assessment, reassessment, or recomputation under section 147, where he has reason to belief that the income has escaped assessment. This further provides that the Assessing Officer shall, before issuing any notice under this section, record his reason for doing so.

Enquiry before assessment

3. The provisions regarding enquiry before assessment have been enshrined in section 142 and 142A, which are summarised as under: -

(1) **Section 142: Enquiry before assessment**

This section consists of four sub-sections dealing with the enquiries to be made before assessment and various sub-sections are discussed as under: -

(a) **Sub-section (1)**

Sub-section (1) provides that for the purpose of making an assessment under this Act, the Assessing Officer may serve on any person, who has made a return, or in whose case, the time allowed for filing of return under sub-section (1) of Section 139 has expired, a notice requiring him,

- (i) where such person has not made a return within the time allowed under section 139(1) or before the end of the relevant assessment year to furnish a return in the prescribed form and verified in the prescribed manner, or
- (ii) to produce or cause to be produced such account or documents as the Assessing Officer may require or
- (iii) to furnish in writing and verified in prescribed manner, the information in such form and on such point or matters as the Assessing Officer may require including a statement of the assets and liabilities.

The opening sentence of this provision, "*for the purpose of making an assessment under this Act,*" makes it clear that there must be an assessment proceeding pending before the Assessing officer. Further the enquiry has to be made specifically from the assessee as is evident from the word "*any person who has made the return*". These conditions are the essence of these provisions. The *proviso* of sub-section (1) further provides that the total wealth statement shall be obtained only after the previous approval of the Joint Commissioner and that the Assessing Officer shall not require for the production of the books of account relating to a period of more than three years prior to the relevant previous year.

(b) **Sub-section (2)**

Sub-section (2) empowers the Assessing Officer to "*make such enquiries as he considers necessary*" for the purpose of obtaining full information in respect of income or loss of any person. Thus, while the Assessing Officer has been empowered to make any enquiry as he considers necessary from any person the exercise of the powers are assessee specific and are for the purpose of assessment.

(c) **Sub-section (2A)**

Sub-section (2A) empowers the Assessing Officer to direct the assessee to get accounts audited and furnish a report of such audit in prescribed form, if he is of

the opinion that it is necessary so to do looking to the nature and complexity of the accounts. This power, however, has to be exercised with the previous approval of the Chief Commissioner or Commissioner and the assessee should be given reasonable opportunity of being heard before issuing such direction. The opening word “*if at any stage of proceedings before him*” ensures that there should be a pendency of proceedings before the Assessing Officer and the word “*having regard to the nature and complexity of the account of the assessee*” ensures that these provisions are also assessee specific.

(d) **Sub-section (2B), (2C) and (2D)**

Sub-sections (2B), (2C) and (2D) provides that powers under Sub-section (2A) can be exercised irrespective of the fact that accounts of the assessee have been audited under any other law, the report has to be furnished within specified time and that the expenses in this respect shall be determined by the Chief Commissioner of Commissioner and shall be paid by the assessee.

(e) **Sub-section (3)**

Sub-section (3) only gives statutory recognition to the well established principle of natural justice, whether or not specifically provided in the Statute. This principle was enunciated by the Hon'ble Supreme Court in **Dhakeshwary Cotton Mills Ltd. vs. ITO (1954) 26 ITR 775** under the provisions of 1922 Act, wherein there were no such specific provisions. This provision specifically provides that except where the assessment has been made under section 144, the assessee shall be given an opportunity of being heard in respect of any information or material gathered on the basis of enquiry under Sub-section (2) or (2A) and is proposed to utilise for the purpose of assessment.

In the context of the orders made under section 144, there are specific provisions for similar opportunity of hearing as inserted by the Direct Tax Laws (Amendment) Act 1987 w.e.f. 01.04.1988. Even before this amendment, Hon'ble Kerala High Court has held that this principle is fully applicable in the case where the assessment is to be made under section 144. The Head note of Hon'ble Kerala High Court in case of **T.C.N. Menon vs. ITO** reported in **(1974) 96 ITR 148** is reproduced as under:-

“The question was whether, before making a best judgment assessment under section 144 of the Income tax Act, 1961, it was not necessary that the assessee should be given under sub-section (3) of Section 142 an opportunity of being heard in respect of any material gathered on the basis of any enquiry under sub-section (2) and proposed to be utilized for the purpose of the assessment, as contended for by the revenue.”

Held, that what section 144 requires the Income –tax Officer to do in the case of a defaulting assessee is to make an assessment of his total income to the best of his judgment, after taking into account all relevant material which the Income tax Officer has gathered. An assessment to the best of judgment is a quasi judicial process and it has to be based on the materials gathered. Any quasi judicial process requires an opportunity for being heard before decision. The decision can be arrived at best, or as correctly as possible, only if the assessee is given an opportunity to say why, on the materials gathered by the Income tax Officer, the income should not be assessed in the manner proposed to be done by him There is no express denial of this well-established common law right in section 142(3) of the Act. Section 142(3) deals with a stage before the Income tax Officer comes to a tentative decision or proposal to determine the total income at a certain amount on the basis of the materials gathered by him. The assessee is entitled to show cause why, on the materials gathered by the Income tax Officer, his total income should be assessed in the manner proposed by the Income-tax Officer. Section 69 of the Act also supports this view. A best judgment assessment without such an opportunity being given is invalid.”

Other provisions for collecting information

4. There are various provisions under the Act, which empowers the Assessing Officer to collect information for the purpose of this Act even prior to insertion of Section 285BA regarding ‘Annual Information Return’. These powers are enshrined in Section 131, 132, 133, 133A, 133B, 134 and 135. A careful study of each provision and the judicial pronouncements pertaining thereto clearly reveals that the information gathered or the findings arrived at by the exercise of the powers envisaged in these provisions can be relevant for the purpose of assessment only when the two conditions are *prima facie* satisfied. The first condition is regarding ‘pendency of assessment proceedings’ and the second is that ‘it is in respect of a particular assessee’ or in other words it is ‘assessee specific’. These provisions *vis-à-vis* the aforesaid two conditions are summarized as under:-

Sl. No.	Sections	Authorities & powers given in the provisions	Whether assessee specific	Pendency of Proceeding required or not	Relevancy for purpose of Act / assessment
1	131(1)	The Assessing Officer and the appellate authorities have powers of– (a) Discovery and inspection (b) Enforcing attendance, (c) compelling production of books of account and other documents (d) Issuing commissions	Yes	Required	Yes
2	131(1A)	The DG, DI, Jt.DI, ADI, Dy. DI & Authorized Officer referred in section 132(1) before taking any action u/s 132	Yes	Not Required	Yes

3	132	The DG, DI, CCIT, CIT, Jt.DIT,Jt.CIT & the other authorised officer for search & seizure	Yes	Not Required	Yes
4	132A	The DG, DI, CCIT, CIT, & the other requisitioning officer for requisition of books of account etc.	Yes	Not Required	Yes
5	133(1) to (5)	Assessing Officer & appellate authorities to call for information	Yes	Required	Yes
6	133(6) by higher authorities	DG, CCIT, DIT, CIT, Assessing Officer & appellate authorities to call for information	No	Not Required	Yes
7	133(6) by lower authorities	Assessing Officer & appellate authorities to call for information	Yes	Required	Yes
8	133A	Income-Tax authority to enter premises & survey	Yes	Not Required	Yes
9	133B	Income-Tax authority to collect certain information	Yes	Not Required	Yes
10	134	Assessing Officer & appellate authorities or any person authorised to inspect register of companies	No	Not Required	No
11	135	DG, DIT, CCIT, CIT, Jt. CIT has power to enquiry	No	Not Required	No

It is evident from the perusal of above provisions that for the purposes of scrutiny assessment, the two conditions relating to the pendency of assessment proceedings and the information to be assessee specific were part of Statute even before the insertion of new provisions relating to Annual Information Return in form of Section 285BA.

Annual Information Return (AIR)

5.1 The provisions as discussed hereinabove, which empowered the Assessing Officer to make enquiry and gather information for making the assessment or reassessment, were found insufficient by the Department. It learnt from experience to use the non-assessee-specific-information in the case of an assessee and new set of provisions were introduced in the form of quoting of Permanent Account Number (PAN) being made compulsory. Sub-section (5), (5A), (5B), (5C) and (5D) of Section 139A read with Rule 114B provides for compulsory quoting of PAN in various documents and categories of transactions. But these provisions were again found insufficient and impractical for the purposes of matching the information with respect to a particular assessee.

5.2 The Task Force on Direct Taxes headed by Dr. Vijay L. Kelkar in its report under '**Chapter 10: Summary and Recommendations,**' has recommended as under:-

“Collection of Information:

10.5 *In view of the extant method of collection of information and constraints in digitizing the volume of information received by the tax administration the Task Force recommends:*

(i) *The Income-tax Act should be amended to provide for submission of “annual information return” by third parties in respect of various transactions as may be prescribed. For this purpose, a proper format of the return also needs to be prescribed. Consequently, the flow of information will be continuous and the discretionary power with the CIB to collect information will be eliminated.*

(ii) *Such annual return of information (including returns relating to tax deducted at source) should be mandatorily required to be submitted on electronic format.*

(iii) *Many of the Departments involved in transactions specified in rule 114B do not have any mechanism for obtaining the PAN of the concerned persons. It is, therefore, necessary that the proforma used by them for their departmental purposes, e.g. the application form for transfer of motor licence, should have the necessary column requiring the applicant to disclose his Permanent Account Number (PAN).*

(iv) *The Department should set up a structure for Electronic Data Interchange (EDI) with some of the major Departments and organizations involved in the transactions specified in rule 114B, such as, banks, stock exchanges, telephone companies, regional transport authority etc. (Paragraph 3.17)”*

5.3 Accordingly, provisions regarding furnishing of Annual Information Return (AIR) were inserted by the Finance Act, 2003 w.e.f., 01.04.2004 as Section 285BA. This is unique provision for collection of information and differ from the earlier ones, *firstly* for no role for the departmental officers and *secondly* that the information is not specific to an assessee. When section 285BA inserted for the first time, it was applicable with respect to any ‘assessee’, only who enters into any financial transactions as may be prescribed, with any others person. Thus this section was applicable to an assessee only.

5.4 The Finance (No. 2) Act, 2004, w.e.f. 01.04.2005 completely substituted this provision with an altogether new section consisting of sub-sections (1) to (5). This made it mandatory for any person, being –

- (a) an assessee; or
- (b) the prescribed person in an office of government; or
- (c) a local authority or other public body or association; or
- (d) the Registrar or sub-Registrar as per Registration Act; or
- (e) the registering authority under Motor Vehicle Act; or
- (f) the Post Master General; or
- (g) the Collector under Land Acquisition Act; or
- (h) the Recognized Stock Exchange; or
- (i) an officer of Reserve Bank of India; or
- (j) a Depository under the Depository Act, 1996,

who is responsible for registering, or maintaining books of account or other document containing records or any specified financial transaction, under any law for the time being in force, to furnish Annual Information Return. Thus under the new provision apart from an assessee the other prescribed persons were also made responsible for furnishing the Annual Information Return. (AIR).

5.5 The relevant Rules were also made in form of Rule 114E and the return is to be filed in Form No. 61A. As per sub-Rule (2) every person mentioned in Column 2 of table below in respect of all transactions of the nature and value specified in the corresponding entry in Column 3, which are registered or recorded by him during a financial year shall furnish the AIR -

Sl. No.	Class of person	Nature and value of transaction
(1)	(2)	(3)
1.	A Banking company to which the Banking Regulation Act, 1949 applies.	Cash deposits aggregating to ten lakh rupees or more in a year in any savings account of a person maintained in that bank.
2.	A banking company to which the Banking Regulation Act, 1949 applies or any other company or institution issuing credit card.	Payments made by any person against bills raised in respect of a credit card issued to that person, aggregating to two lakh rupees or more in the year.
3.	A trustee or the manager of the Mutual Fund as may be duly authorised by the trustee in this behalf.	Receipt from any person of an amount of two lakh rupees or more for acquiring units of that Fund.
4.	A company or institution issuing bonds or debentures.	Receipt from any person of an amount of five lakh rupees or more for acquiring bonds or debentures issued by the company or institution.
5.	A company issuing shares through a public or rights issue.	Receipt from any person of an amount of one lakh rupees or more for acquiring shares issued by the company.
6.	Registrar or Sub-Registrar under the Registration Act, 1908.	Purchase or sale by any person of immovable property valued at thirty lakh rupees or more.
7.	An officer of Reserve Bank of India duly authorized by the Reserve Bank of India in this behalf.	Receipt from any person of an amount or amounts aggregating to five lakh rupees or more in a year for bonds issued by the Reserve Bank of India.

The responsible persons will furnish the AIR to Commissioner of Income, (Central Information Branch) and it should be furnished in electronic media in prescribed Form No. 61A, which is in two parts, Part-A, containing the particulars and verification and Part -B, containing details of transactions.

5.6 The returns for Assessment Year 2008-09 in Form No. ITR-1, ITR-2, ITR-3 and ITR-4 provided for furnishing of details of transactions made during the Financial Year under Schedule AIR under various codes given as under: -

Sl. No.	Code	Nature of transactions
1.	001	Cash deposits aggregating to ten lakh rupees or more in year in any savings account by you maintained in a banking company to which the Banking Regulation Act, 1949 (10 of 1949), applied (including any bank or banking institution referred to in section 51 of that Act)
2.	002	Payment made by you against bills raised in respect of a credit card aggregating to two lakh rupees or more in a year.
3.	003	Payment made by you of an amount of two lakh rupees or more for purchase of units of Mutual fund.
4.	004	Payment made by you of an amount of five lakh rupees or more for acquiring bonds or debentures issued by a company or institution.
5.	005	Payment made by you of an amount of one lakh rupees or more for acquiring shares issued by a company.
6.	006	Purchase by you of any immovable property valued at thirty lakh rupees or more.
7.	007	Sale by you of any immovable property valued at thirty lakh rupees or more.
8.	008	Payment made by you of an amount of five lakh rupees or more in a year for investment in bonds issued by Reserve Bank of India.

Guidelines for Scrutiny and AIR

6.1 The information from AIR is being made basis for the scrutiny of cases since its advent. The Action Plan for Year 2008-09, which laid down the selection criteria for scrutiny of cases, has provided selection of cases for scrutiny at “NON-NETWORK stations” and “NETWORK stations”, separately. As per the Action Plan, the following categories of cases shall be selected for scrutiny at “NON-NETWORK stations”: -

ITR – 1		ITR – 2, ITR – 3, ITR – 4	
(1)	Cash deposits in Savings Bank Account of assessee in relevant Financial Year as per AIR Information (code 001) exceed Rs. 10 lacs	(1)	Cash deposits in Savings Bank Account of assessee in relevant Financial Year as per AIR Information (code 001) exceed Rs. 10 lacs
(2)	Sale consideration of property sold by the assessee in relevant Financial Year as per AIR Information (code 007) exceed Rs. 30 lacs.	(2)	Sale consideration of property sold by the assessee in relevant Financial Year as per AIR Information (code 007) exceed Rs. 30 lacs and this information is not disclosed in Schedule AIR of assessee's Return.
(3)	Investment in property by the assessee during the relevant Financial Year as per AIR information (code 006) exceed Rs. 30 lacs and also exceeds 8 times of his	(3)	Investment in property by the assessee during the relevant Financial Year as per AIR information (code 006) exceed Rs. 30 lacs and this information is not

“Gross Total Income + Exempt Income – Total Tax Paid”	disclosed in Schedule AIR of assessee’s Return.
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It is quite clear from the above criteria laid for selection of cases for scrutiny; it has been linked to certain information given in AIR and as disclosed by assessee in his return also in this respect. The criteria for selection of cases do not appear uniform and equitable. For example, while in the cases of cash deposits exceeding Rs. 10 lacs (code 001) in Savings Account all returns, whether in ITR – 1 or ITR – 2, ITR – 3 and ITR – 4, shall be selected for scrutiny, there are different parameters for AIR information in code 006 and 007 for ITR – 1 and others. As is evident from the above chart, in case of ITR – 1, all the cases where sale consideration of property exceeds Rs. 30 lacs will be selected for scrutiny on basis of information given in the return itself, in cases of ITR -2, 3 and 4, it will be selected only when this information is not disclosed in Schedule AIR of return. Similarly for ‘Code 006’, regarding investment in property exceeding Rs. 30 lacs, there are different criteria for ITR – 1 on one hand and ITR – 2, 3 and 4 on the others. By implication at “NETWORK station “ the cases will be selected on the same criteria automatically.

6.2 The Central Board of Direct Taxes has issued various guidelines for the scrutiny of cases on the basis of AIR information from time to time to ensure smooth working of new system. One important guideline in this respect was issued by the Board in its Press Released dated 26.10.2006 reported in **[2006] 157 Taxman 1(ST)**, which for the ready reference is being reproduced as under:-

“PRESS RELEASE DATED 26-10-2006

Section 285BA of the Income-tax Act, 1961 – Annual Information Returns – CBDT Guidelines to deal with grievances arising out of cases selected for Scrutiny based on Annual Information Returns

The Central Board of Direct Taxes have laid down the following guidelines for dealing with grievances arising out of cases selected for scrutiny on the basis of information contained in Annual Information Returns (AIR):-

1. *All cases selected for scrutiny on the basis of information contained in AIR during a month will be displayed by the 15th of the following month.*
2. *Queries made on the basis of information contain in AIR will be specific and to the point.*
3. *It shall be mentioned in the scrutiny notice that written reply along with supporting documentary evidence will be sufficient compliance to the scrutiny notice.*
4. *It shall be affixed on the scrutiny notice that “Personal attendance not essential”.*
5. *If the information and supporting evidence received in response to the scrutiny notice is sufficient, personal attendance of the taxpayer shall not be insisted upon.*
6. *Chief Commissioners and Commissioners shall fix a reasonable period every day to hear grievances of such taxpayers, if any, without prior appointment and display the same publicly.*
7. *Chief Commissioners and Commissioners may also hold open house meetings in this regard.*
8. *Drop Boxes shall be provided for such taxpayers who wish to file their grievance in writing.*
9. *Steps shall be taken to redress such written grievances expeditiously.”*

6.3 There are various other guidelines and instructions that have been issued by the Board and for the ready reference the a few are mentioned as under:-

- (1) Circular No. 07/2003 dated 05.09.2003 – Explanatory Notes on Clauses as reported in [2003] 260 ITR (ST) 128 at 179
- (2) Circular No. 05/2005 dated 15.07.2005 – Explanatory Notes on Clauses as reported in [2005] 273 ITR (ST) 139
- (3) Circular No. 07/2005 dated 24.08.2005 – as reported in [2005] 277 ITR (ST) 17
- (4) Order F No. 153/230/2005 – TPL dated 30.09.2005 for non – levy of penalty u/s 271 FA on delayed furnishing of AIR

Various issues involved

7. The new channel of collecting information in form of Annual Information Return as provided in Section 285BA of the I. T. Act, 1961, have thrown open various issues as to its relevance, legal implications and practical problems while co-relating or matching the information with a particular assessee in assessment proceeding. These issues, which are only indicative and not exhaustive, are summarized as under: -

- (1) The information as per AIR is a huge pool of information, the span of which may be spread to the entire county. The information furnished by the person furnishing the AIR with his jurisdictional Commissioner of Income Tax (CIB) may not be easily matched with the information that will be furnished in return by an assessee in altogether different jurisdiction unless there is well oiled mechanism for matching of this information through Information Network Technology Electronic Data interchange (EDI) and PAN.
- (2) The AIR is to be furnished by 31st August next following the Financial Year in which the specified transaction is registered or recorded. At this stage it is not clear as to how the said information in AIR would be utilized for purposes of assessment. The criteria for selection of scrutiny of cases for year 2008-09 as announced by CBDT is mostly with reference to the information given in Schedule AIR of the return of assessee so far as ITR – 1 is concerned and it is bases on the AIR only for ITR – 2, 3 and 4 with respect to information in '(Codes 006' and '007' regarding investment and sale of property exceeding Rs. 30 lacs, but how it will be matched with the information in return and at what stage of assessment proceeding is not clear.
- (3) It is clear from the above discussion that the department will have AIR information from two sources, one from assessee and other from the persons specified in section 285BA read with Rule 114E . To make the information useful for assessment it is necessary to match, reconcile and cross-check the information gathered from both these sources.

This may not be an easy task as the person filing AIR is supposed to furnish the information only with respect to the own records whereas the assessee will have to furnish such information with respect to all the agencies. For example, if an assessee has maintained two Saving Bank accounts with two different banks and has deposited cash of Rs. 15 lakh and Rs.12 lakh in each account during the financial year, while the banks will report the deposits of 15 lakh and Rs.12 lakh each respectively in the AIR furnished by them, the assessee will furnish the figure of Rs. 27 lakh in Schedule AIR of return. There is no mechanism in place to match these figures and the entire process of collecting information may be useless for the purposes of assessments as it may lead to roving or fishing enquiry.

- (4) The information from these two different sources may not match each other on account of difference in perceptions and interpretation of the provisions as well. For example the AIR provisions are applicable to the banking companies to which the Banking Regulation Act, 1949 applies. Accordingly, it may not apply to the banks in co-operative sector or to the unscheduled banks, and this difference in interpretation at both ends may lead to mismatch of data.
- (5) Another situation may arise with respect to transactions with banks where core Banking facilities are available. For example, an assessee in Kolkata maintaining Bank account with ICICI Bank in Kolkata branch, sells goods to a party in Chennai. The said party deposits money in cash in Account of assessee in the Chennai branch of ICICI Bank. The amount though deposited in ICICI Chennai is ultimately credited in Account with Kolkata branch of ICICI. Whether this will be treated as cash deposit or a mere transfer entry by Kolkata Branch, is a debatable issue and different interpretations are possible. The possibility of mismatch cannot be ruled out in such Inter-city transactions.
- (6) As per the existing scrutiny criterion the returns where the assessee has shown the cash deposit exceeding Rs.10 lacs in any of his savings Bank Account, the cases will be automatically selected for scrutiny, whether or not the same is reported in AIR information. This may lead to futile exercise as every deposit in Bank account may not be income assessable to tax. Moreover such criterion makes the AIR information irrelevant.
- (7) This situation may be illustrated by another example where an assessee receives on his retirement the sum exceeding Rs. 25 lacs on account of refund of his retirement benefits, P.F. and gratuity etc. He relocates his bank account and deposits the entire sum of Rs. 25 lacs during the financial year in cash after withdrawing the same from the old bank account. From this new Bank account he makes investments in Mutual Funds, Shares etc. All these transactions may though attract provisions of Sec.285BA read with Rule

114E but may not result in any income chargeable to tax. The selection of such cases for scrutiny will be a futile exercise and wastage of resources.

- (8) The selection of these cases for scrutiny merely on the basis of AIR may lead to a situation where though there may be spurt in scrutiny cases but that may not be productive for revenue. The very idea of selection of cases for scrutiny on the basis of certain payments and transaction without any well oiled mechanism of matching the information from AIR and information furnished by assessee in return will be arduous task for the department which is maintaining only limited or minimum scrutiny policy since last several years.
- (9) The relevance of AIR information for assessment appears to be limited in sense that in many cases the limitation has already expired and the Assessing officer has to resort to the provisions of section 147/148 for making assessment on the basis of such information. It is matter of debate whether mere information of AIR, without proper and cogent material and the matching of same with the accounts of assessee, will be treated as income for the purpose of assessment. This situation is further aggravated from the fact that no documents are allowed to be furnished along with return and there is no scope in ITR-1, ITR-2, ITR-3 and ITR-4 , where provisions of section 44AA are not applicable, to furnish details of balance sheet or the statement of affairs. It has been held in a catena of judicial pronouncements that the provisions of Section 147/148 cannot be resorted to on the basis of suspicion and surmises, on the basis of information that is vague and to make mere roving or fishing enquiries. The initiation of reassessment proceeding merely on the basis of AIR information cannot withstand scrutiny of the court.
- (10) The cases are being selected for scrutiny on the basis of AIR information from Assessment Year 2005-06 and it has been seen from experience that large number of cases that have been selected for scrutiny on the basis of AIR information are related mostly to the investment in share and Mutual funds and have resulted in futile exercise. Though there are instructions from the Board that in such cases of scrutiny on the basis of AIR information, the assessment proceeding should be conducted in such a manner that there should be no harassment of assessee. These guidelines and instructions are being blatantly flouted by the authorities and the assessments are being made as normal scrutiny assessments. Though these instructions are binding on Income Tax Authorities but even the appellant authorities are not interfering in cases where the assessment are being made in violation of instructions. It has been held in various judicial pronouncements that these instructions by the board are binding on authorities, subordinate to it and this is the duty of the Court to uphold the sanctity of such instructions in the interest of transparency in administration and public policy. Some of these judicial pronouncements are being referred as under:-

- **Navneet Lal Javeri v. AAC**
[1965] 65 ITR 198 (SC)
- **Varghese (KP) v. ITO**
[1981] 131 ITR 597(SC)
- **C.C.E v. Dhirendra Chemical Industires**
[2002] 254 ITR 554 (SC)

Similar anomalies may be found in respect of other transactions also, which are not being mentioned for the sake of brevity.

CONCLUSION AND SUGGESTIONS

8. In the light of discussions made hereinbefore, it appears that the scheme of scrutiny assessment *vis-à-vis* the AIR information needs substantive streamlining to avoid unproductive loss of man-hours, to avoid unwanted harassment of assessees and to improve the ratio of expenditure to tax collection. To make the AIR information relevant and pertinent for the purpose of scrutiny assessment, the Department may resort to the following amongst many other options: -

- (1) The adherence with the instructions issued by the Board should be ensured in its entirety and the lower authorities must abide by the same in letter and spirit.
- (2) Like in the search cases, the special provisions and procedures for assessment may be laid for the scrutiny assessment in relation to the AIR information to make it expedient and disposal of cases within shortest possible timeframe.
- (3) The mechanism of enquiry through simple correspondence can be properly laid just to enquire and *prima facie* appraisal of the source of investment and the manner in which the transaction has been reflected in the return. If the assessee is able to show the disclosure of transaction by furnishing the relevant evidences, the proceeding should be closed without resorting to the normal assessment procedures.
- (4) The scheme of 'limited scrutiny' may again be reintroduced in reference to the AIR information. It is ironical that the provision related to limited scrutiny was discontinued by the Finance Act, 2003 through which the provisions relating to the AIR were inserted in form of section 285BA in the I. T. Act, 1961.
- (5) The proper sorting of information and its correlation with a particular assessee should be ensured so that the information could be utilized for making assessment in proper manner. The timely action in this respect may avoid resorting to the provisions of section 147 / 148 so also the unnecessary litigation. While the correlation of the information with a particular assessee will take care of the information being assessee specific, the timely utilization of information in course of assessment will take care of pendency of

assessment proceeding thereby satisfying the two primary conditions of a legally valid assessment.

