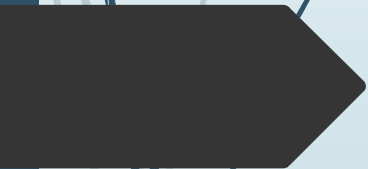


# Discussion on Alleged Bogus Donations



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## Background for the issue of notices under section 148A of the Income Tax Act

- ▶ As per the news, around 3500 taxpayers in Ahmedabad, who have donated to 23 Political parties, are in receipt of notice under section 148A(b) of the Income Tax Act for the A.Y. 2019-20. (Source times of India- April 2, 2023)

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# 1. Why this Notice?

**Search Action**

**by the**

**Income Tax Department**

# Outcome of the Search Operations

- ▶ 23 Political Parties were involved in the activity of providing accommodation entry by way of bogus donation.
- ▶ Donations were received through cheque/RTGS/NEFT by the 23 Political Parties
- ▶ This money then re-routed through various layers and returned to original Donors
- ▶ Mostly returned in the form of cash to the Donors
- ▶ In lieu of some commission ranging from 3.5% to 5%
- ▶ There were 35 bogus intermediary and 3 major exit providers involved in the above process.
- ▶ Donors have claimed tax advantage in the form of deductions from Gross Total Income

# Evidences collected during Search Operations

- Statements recorded on oath of the searched persons admitting the above facts
- Diaries containing details of the Commission
- Loose papers containing above information
- WhatsApp Chats
- Excel Sheets giving complete information
- Other digital evidences

## 2. Consequences of the proceeding commenced under section 148A of the Act – An Overview

- Order under section 148A(d) of the Act
- Receipt of notice under section 148 of the Act requiring the assessee to file the return.
- Commencement of re-assessment proceedings under section 147 of the Act
- Taxability of other income which has escaped assessment and which comes to the notice of the assessing officer while carrying out re-assessment proceedings under section 147 of the Act
- Consequent Penalty proceedings under section 270A(9) of the Income Tax Act
- Probability of Prosecution under section 276C of the Income Tax Act

### 3. Defence - Various Stages

#### 1. Before commencement of proceedings under section 147 of the Act

Filing a writ petition against the order passed under section 148A(d) of the Act for

- (a) Procedural irregularities in contravention of the provisions of Section 148A of the Act
- (b) Jurisdictional irregularities, if any

**Filing of writ petition- How far advisable?**

#### 2. After passing of an assessment order under section 147 of the Act which resulted into an addition towards alleged bogus donation

Pass through the appellate jurisdiction (First appeal, ITAT, HC and SC)

- On facts
- On Law point

## 4. Defence on facts

### Facts

#### Irregularities in conducting re-assessment proceedings

- ▶ Non-issue of notice under section 143(2) of the Act
- ▶ Violation of SOP for conducting Faceless Assessment
- ▶ Limitation aspects
- ▶ Addition merely on the basis of statement of third party

#### Cross - Examination

- ▶ Whether facts necessitates cross-examination?
- ▶ Is Cross-examination mandatory on the part of the A.O.?



## 5. Defence on law points

### Law Point

#### Irregularities in 148A proceedings

- ▶ Jurisdictional issues
- ▶ Sanction issues under section 151 of the Act
- ▶ Procedural Lapses
- ▶ Non-providing the copies of the documents/material relied upon
- ▶ Assumption of wrong facts
- ▶ Change of Opinion
- ▶ Limitation aspects
- ▶ Not a well-reasoned order

#### Past precedents

## 6. Critical Guide for responding the notices issued under section 148A(b) of the Act

Remember:

**Your response to the notice under section 148A(b) of the Act is a foundation to entire proceedings.**

Also remember that:

- (a) Each assessing officer drafted the notice under section 148A(b) differently
- (b) Contents of the various notices issued under section 148A(b) of the Act, therefore, differs heavily
- (c) Treat each notice under section 148A(b) as UNIQUE Notice
- (d) Therefore, response to each notice has to be Unique and not otherwise

## Action points while drafting reply to the notice under section 148A(b) of the Act

- Study the content of the notices and the material provided in detail.
- Acknowledge the fact that notice has been received
- Point out the Jurisdictional issues, if any
- Point out the procedural lapses, if any
- Demand the copy of sanction under section 151 of the Act, if any
- Demand the material/ documents not provided but relied upon in the notice
- Point out assumption of wrong facts
- Point out Change of Opinion, if any
- Request for full copies of the statement recorded of various persons
- Request for the cross-examination



# **Discussion of Two Notices and Sample Reply**

# References

## Conducting inquiry, providing opportunity before issue of notice under section 148.

**148A.** The Assessing Officer shall, before issuing any notice under [section 148](#),—

- (a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;
- (b) provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under [section 148](#) should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);
- (c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);
- (d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under [section 148](#), by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

**Provided** that the provisions of this section shall not apply in a case where,—

(a) a search is initiated under [section 132](#) or books of account, other documents or any assets are requisitioned under [section 132A](#) in the case of the assessee on or after the 1st day of April, 2021; or

(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under [section 132](#) or requisitioned under [section 132A](#), in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under [section 132](#) or requisitioned under [section 132A](#), in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, <sup>2</sup>*[relate to, the assessee; or*

(d) *the Assessing Officer has received any information under the scheme notified under [section 135A](#) pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee.]*

*Explanation.*—For the purposes of this section, specified authority means the specified authority referred to in [section 151](#).]

## Penalty for under-reporting and misreporting of income.

**270A.** (1) The Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner may, during the course of any proceedings under this Act, direct that any person who has under-reported his income shall be liable to pay a penalty in addition to tax, if any, on the under-reported income.

(2) A person shall be considered to have under-reported his income, if—


(a) the income assessed is greater than the income determined in the return processed under clause (a) of sub-section (1) of [section 143](#);

(b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished or where return has been furnished for the first time under [section 148](#);

(c) the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;

(d), (e) and (f).....

(g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.



(7) The penalty referred to in sub-section (1) shall be a sum equal to fifty per cent of the amount of tax payable on under-reported income.

(8) Notwithstanding anything contained in sub-section (6) or sub-section (7), where under-reported income is in consequence of any misreporting thereof by any person, the penalty referred to in sub-section (1) shall be equal to two hundred per cent of the amount of tax payable on under-reported income.

(9) The cases of misreporting of income referred to in sub-section (8) shall be the following, namely:—

- (a) misrepresentation or suppression of facts;
- (b) failure to record investments in the books of account;
- (c) claim of expenditure not substantiated by any evidence;
- (d) recording of any false entry in the books of account;
- (e) failure to record any receipt in books of account having a bearing on total income; and
- (f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.



## Wilful attempt to evade tax, etc.

**276C.** (1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable, or under reports his income, under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable,—

- (i) in a case where the amount sought to be evaded or tax on under-reported income exceeds twenty-five hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
- (ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to two years and with fine.

*Explanation.*—For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person—

- (i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or
- (ii) makes or causes to be made any false entry or statement in such books of account or other documents; or
- (iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or
- (iv) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.



# Thank You

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