

NOTE ON CASH DEPOSITS

Based on NMS data on cash deposits in savings bank accounts, hundreds of cases were reopened with respect to assessment year 2011-12. Further, several cases were selected for assessment year 2016-17 in CASS cycle. The Assessing Officers are finding it difficult to trace the assessee in many cases and where assessees are available, the Assessing Officers are completing the assessment without taking an uniform stand. For eg. in many cases, the assessees are filing returns showing the entire cash deposit as business income u/s.44AD and offering income at 8% which is accepted summarily. Such cases in the past, has resulted in audit objections. It is also found that in many cases, the required information has not been collected and the assessment is completed accepting assessee's reply. Therefore the following note is prepared to guide the Assessing Officers in completing the cases in time and for completing the scrutiny taking an uniform stand considering all the issues possible with respect to cash deposit cases. Considering that only 2 months is left to complete the assessments, an illustrative timeline is suggested to complete the cases as below:

Day 1: A. Issue notice u/s.142(1) to the assessee calling for the following details.

- (i) Source of cash deposit.
- (ii) Contact Number of assessee / Authorised representative.
- (iii) Proof to substantiate the sources given.
- (iv) Bank account details
- (v) Any other relevant details.

B. Issue letters to banks calling for the following details u/s.133(6)

- (i) Bank statement for the relevant period
- (ii) Latest contact number / address
- (iii) Details of any Term Deposits / Investment details.
- (iv) Details provided in KYC norms.
- (v) Introducer's contact details.

Day 7: If assessee has responded, further details can be obtained as per the checklist and assessment can be completed.

If assessee has not responded – issue show cause notice as to why the entire cash deposit should not be treated as unaccounted income and also issue notice u/s.271(1)(b) for non-compliance, if notice u/s.142(1) is served and the assessee is not responding.

If bank has not responded to notice u/s.133(6), issue summons u/s.131 calling for all the details and show cause as to why penalty of Rs.100 per day of default should not be levied under sec.272A(2)(c). Also send ITI to collect the details.

Day 14: If assessee has responded, verify details and follow the check list and scrutiny may be completed.

If assessee has not responded levy penalty u/s.271(1)(b) and give a final opportunity to the assessee by giving draft assessment order which will mention the addition proposed to be made and also the initiation of penalty u/s.271(1)(c).

If assessee is not traceable / Notice u/s.148 and other notices have been served by affixture, complete the assessment u/s.144 as per the available information.

Day 21: If assessee is responding, complete scrutiny after verifying the details as per check list.

If assessee is not responding despite notices served, complete scrutiny u/s.144 and ensure coercive steps are taken to collect atleast 20% of the demand once fallen due.

CHECK LIST

1. If cash deposit is out of agricultural income –
 - a. Proof of revenue records, chitta, adangal etc.
 - b. Proof of sales made to marketing societies, third parties etc.
 - c. Identity of purchasers with receipts issued to them.
 - d. Whether cash deposit is in previous and subsequent years. If not, reason for the same.
 - e. Compare withdrawals from bank related to agricultural expenses. If it is net amount deposited in bank, proof for expenses made.
2. If the cash deposit is out of business / professional income –
 - a. Proof for having conducted business.
 - b. Trade licence/ TIN number/ Registration with any Government Department.
 - c. Purchases / Sales bills etc.
 - d. Evidence to prove that it is a business / professional receipt.
 - e. Month wise Sales Tax return / Service tax return.
 - f. Whether cash deposits have been made on regular intervals.
 - g. Whether cash deposit is in previous and subsequent years. If not, reason for the same.
3. If the cash deposit is out of gift from relatives –
 - a. Confirmation letters
 - b. Donor's assessment particulars.
 - c. Credit worthiness / details and proof for drawing from the bank of donor.
4. If the cash deposit is out of rental deposit / lease deposit –
 - a. Copy of rental / lease agreement / confirmation letter.
 - b. Whether registration requirements is complied with.
 - c. Whether rental receipt / lease income is offered for assessment.
 - d. Evidence for payment of property tax.
 - e. Source for construction / acquisition of property.
(possibility of invoking section.69)
5. If the cash deposit is out of loan received –
 - a. Copy of loan agreement, lender assessment particulars, genuineness of transaction, credit worthiness.
 - b. Interest & repayment terms.
 - c. Whether utilised for purpose of generating income.
(possible disallowance of interest if not utilised for the purpose of earning income)
 - d. Mode of acceptance with respect to 269SS and related penal proceedings.

6. If the cash deposit is out of trade advance / advance for immovable properties –
 - a. Identity and assessment particulars of the person who advanced.
 - b. Ledger copy from customer, agreement copy and subsequent square-off (sale or return of money)
7. If the cash deposit is out of return of advance money, loan, registered chits etc. -
 - a. Identity and assessment particulars of the re-payer.
 - b. Ledger copy / agreement copy / cancellation thereof and subsequent square-off (return of money)
8. If the cash deposit is out of cash received under Trust i.e. received and held on behalf of others –
 - a. Evidence for holding on behalf of others.
 - b. Other persons' assessment particulars.
 - c. Genuineness of transaction
 - d. Credit worthiness of other persons.
9. If the cash deposit is out of salary –
 - a. Appointment letter.
 - b. Reason for salary received in cash and deposited by assessee into bank account.
 - c. Employee Register / PF returns etc.
 - d. TDS, if any.
 - e. Confirmation letter from employer for cash payment of salary.
10. If the cash deposit is out of Capital Gains / Sale of Agricultural land
 - a. Copy of sale agreement / Registered sale deed.
 - b. Application of Sec.50C.
 - c. In respect of agricultural land, as per amendment to provisions of Sec.2(14)(iii)(b) with effect from 01.04.2014, aerial measurement should be considered.
 - d. Proof for agricultural land.
 - e. Relevant case laws and facts are to be verified.
11. If the cash deposit is out of Other sources – Interest / Dividend / Chit Dividend)
 - a. Whether interest income is offered to tax.
 - b. Whether loan / deposit / advance is reflected in books. If not, check the possibility of invoking Sec. 69 and also Sec.269SS and 269T.

The following points should also be taken care of:

1. If assessee is claiming Section 44AD, it should be verified that the claim for business is correct and whether he is an eligible assessee engaged in eligible business (twin condition). The business characters such as continuous and systematic exercise of activity, profit motive, transaction between two persons, evidence for twin activities of buying and selling, other proofs should be verified. Sec.44AD has to be applied on facts of the cases and cannot be applied to all cash deposits.

2. In case if it is a single cash deposit in a year, it cannot be business income but most probably the amount is received out of sale of property. If the cash amount deposited is tallying with the cash amount mentioned in the sale deed and the date of deposit is within a reasonable range, it can be accepted as capital gain. If the assessee claims that it is on-money received, then sale agreement should be submitted as proof.
3. The possibility of invoking Section 68 should be explored in the absence of evidences and supporting documents. From assessment year 2013-14, any addition made u/s.68, 69A, 69B, 69C etc. should be taxed at 30% as per Section 115BBE.
4. In cases where assessee is not responding / not traceable, the details should be obtained from bank before making any addition. It is possible that the amount is wrongly mentioned in NMS. In many cases the NMS data has missed decimal value. For eg. NMS data showed Rs.3 Crores but actual deposit was only Rs.3 lakhs.
5. If the assessee is claiming peak credit, the assessee should be able to prove source of the premise underlying the concept of peak credit in squaring up of deposits in the account with the corresponding payments out of account to the same person. Peak credit could be applied only in case of squared up accounts. In other words, where an assessee is unable to explain sources of deposits and the corresponding payment, then he would not get benefit of peak credit.
6. In case the assessee is not responding, obtain the details with respect to housing loan / jewel loan / other deposits like Term Deposit, Fixed Deposit etc. / investment made in bank which will be useful later for collection.
7. Notice u/s.274 should specifically state grounds mentioned in Section 271(1)(c) whether it is for concealment or for furnishing of inaccurate particulars of income. Sending printed form where all grounds mentioned in Section 271 are mentioned would not satisfy requirement of law (Manjunatha Cotton and Ginning Factory 35 Taxmann.com 250). Further in the assessment order also, it should be brought out clearly whether the penalty is initiated either for concealment of income or for furnishing of inaccurate particulars.

NOTE ON MULTI COMMODITY TRANSACTION

Based on NMS data (Txn. Code 502 - National/Multi Commodity Exchange-Contract of Rs.10 Lacs or more for sale or purchase in the exchange), many cases were reopened with respect to assessment year 2011-12 involving multi commodity transactions amounting to several Crores. Further, certain cases were selected for assessment year 2016-17 in CASS cycle which has multi commodity transactions as one of the reason. The Assessing Officers were finding it difficult to find the assessees / get details and to proceed further. Some Assessing Officers suggested to make addition on percentage basis such as 0.25% of transaction in cases where assessees were not traceable / information were not furnished. But, it will result in huge non-collectible demand and there is no basis to make such arbitrary addition. In practice, it is found that a person who has a margin money of Rs. 5 lakhs can do commodity transaction for several Crores.

The information available in Individual Transaction Statement (ITS) comprises only of the transaction amount, date of transaction and transaction reference. It does not show the profit/ loss made out of this transaction. Further, the transaction data is also not complete. These details have been uploaded by CIB and there is possibility of duplication / omission of transactions. The multi commodity transaction involves purchase of gold, silver, crude oil, natural gas, copper etc. in the commodity exchanges through brokers. In normal practice, the assessee transfers initial margin money / seed money to the broker's bank account and through broker, they trade in the commodity market. The broker maintains separate client ledger for each client. Depending upon the broker, trading can be made in multiples of 10, 20, 50 etc. of the margin money (exposure) which means that for a margin money of Rs.3 lakhs and with the broker allowing 10 times of exposure, the assessee can buy 1 kg of gold for Rs.30 lakhs and can sell the gold in the same day making a profit / loss based on the sale value. Multiple transactions can be made in a single day within the value of Rs.30 lakhs. However, the losses made will be deducted from the margin money and if the assessee wants further transactions, he has to introduce additional margin money which will get reflected in client ledger held by the broker..

The scrutiny proceedings require the following details to complete the assessment:

1. **The profit / loss made out of the transaction** (Transaction has to be treated as speculative transaction for assessment year 2011-12 as Sec.43(5)(e) was introduced with effect from 01.04.2014. Therefore, any loss made out of these transactions cannot be allowed to set-off with any other income)
2. **The source for the initial margin money and subsequent margin money** (Unexplained margin money is to be added u/s.68, 69, 69A as the case may be. From the assessment year 2013-14, Section 115BBE is to be invoked in these cases).

The Assessing Officers may follow these steps to obtain the requisite information.

1. Information may be sought u/s.133(6) from the Asst. Manager – Market Operation, Multi Commodity Exchange of India Ltd., CTS No.255, Exchange Square, Suren Road, Chakala, Andheri East, Gundavali, Mumbai – 400 093 ; e-mail - marketoperations@mcxindia.com ; Shri Nihet Patel, Assistant Manager- Market Operation, 022-67318888. MCX supplies the details of purchases / sales date wise along with the Traded price, Traded value, Trade No., expiry date. It also provides the MTM details (profit / loss details) date wise.

2. Information with respect to the KYC, Bank details, client ledger account, contract notes can be obtained from the broker, if the assessee is providing the broker details, which will contain the details of net profit / loss and margin money.
3. If the bank details are available in the 360° for any of the years, the bank statements may be obtained from the banks from which the details of initial margin money and subsequent margin money paid, if any, can be obtained.

Normally, there may be four types of situations:

1. Assessee is providing all the details.
2. Assessee is not traceable.
3. Assessee appears but could not provide information with respect to the commodity transaction as brokers have closed office / broker detail not available / broker not providing assessee's client ledger etc., but provides bank statement.
4. Assessee is not responding to any of the notices /not submitting any details including bank statement.

In cases where assessee is providing all the details, profit / loss made out of the transactions is available, expenses should be allowed and the net profit should be taxed and speculative loss should be allowed to be carried forward.

In cases where assessee is submitting details of client ledger, the expenses with respect to the MCX charges, broker commission, CTT paid, service tax paid, if any etc. may be allowed as expenses towards the profit made which is treated as speculative income.

If the assessee is able to explain the source of initial and additional money transferred from his bank accounts, no addition needs to be made in these cases.

In the cases where assessee is not traceable and where assessee is not able to furnish information,

1. The gross profit made in commodity transaction as obtained from MCX can be treated as speculative income (A.Y 2011-12) as per Sec.43(5) and can be taxed. No allowance can be given with respect to expenses as information is not available.
2. The loss, if any, should be taken as speculative loss and cannot be allowed to set-off against any other income.
3. In the absence of bank statement of the assessee from which the margin money was transferred, an estimated addition (with respect to unexplained margin money) can be assessed by taking 10% of initial transaction (which is available from the information received from MCX) as the margin money (considering 10 times exposure) and wherever accumulated losses exceed the estimated margin money, 10% on the subsequent immediate transaction exceeding the available margin money can also be estimated as additional margin money.

For eg: If the first transaction is for Rs 30 lakhs, considering that the assessee's broker has given him 10 times exposure, the initial margin money has to be taken as Rs 3 lakhs and after the accumulated losses exceed this 3 lakhs of initial margin money, 10 % of the next transaction after that should be taken as additional margin money and to be calculated thereafter, after every instance when the accumulated losses exceed the additional marginal money. If the assessee has already filed return and the source has been explained, this need not be added.

Further details are being obtained from Risk Assessment Directorate. If any details are available, it will be shared subsequently.