Introduction to Income Taxes

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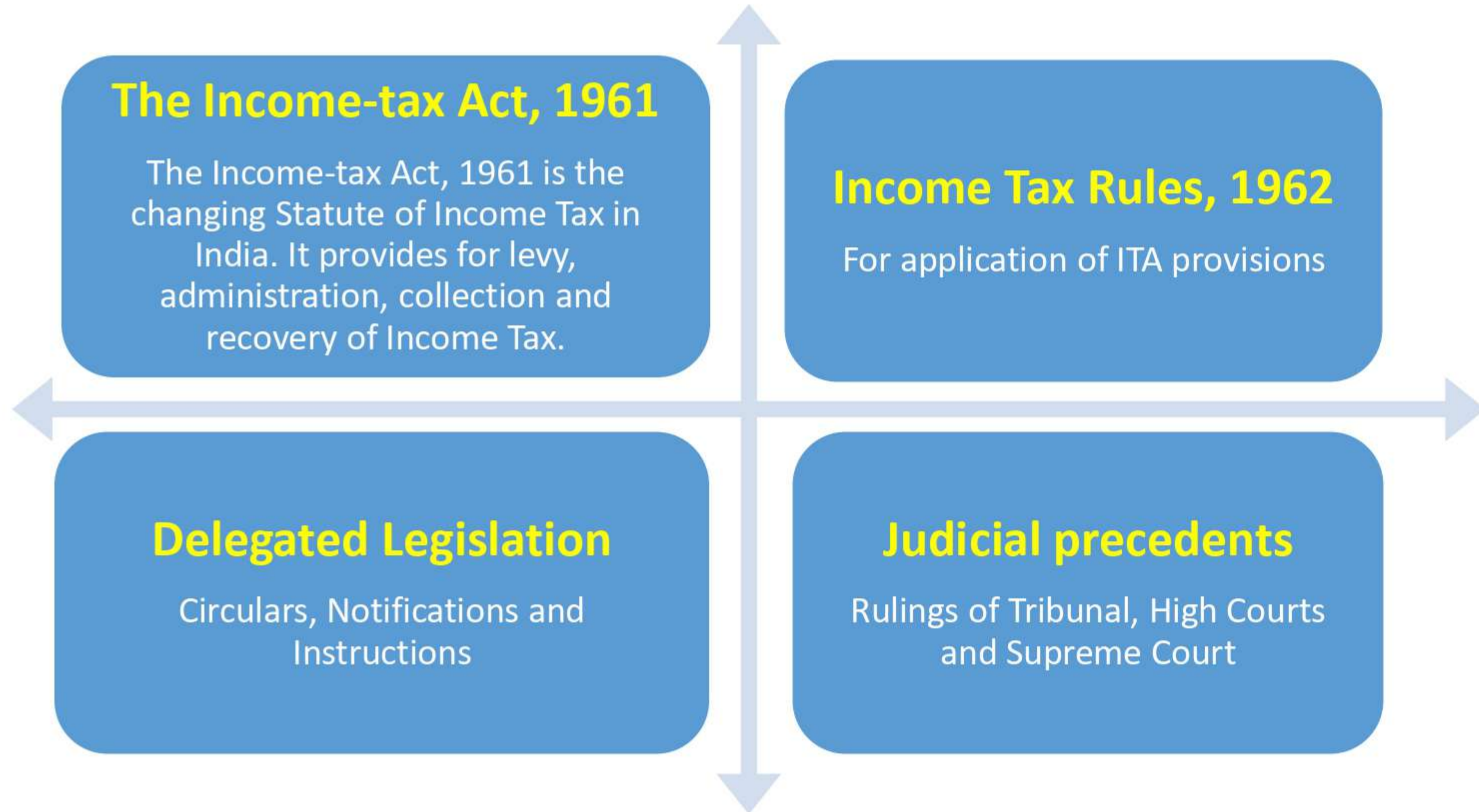
- Rajput Jain & Associates is a Chartered Accountants firm, with it's headquarter situated at New Delhi (the capital of India). The firm has been set up by a group of young, enthusiastic, highly skilled and motivated professionals who have taken experience from top consulting firms and are extensively experienced in their chosen fields has providing a wide array of Accounting, Auditing, Taxation, Assurance and Business advisory services to various clients and their stakeholders. focus at providing tailor made solutions to challenging problems of our clients, and perform with high quality and timely service.

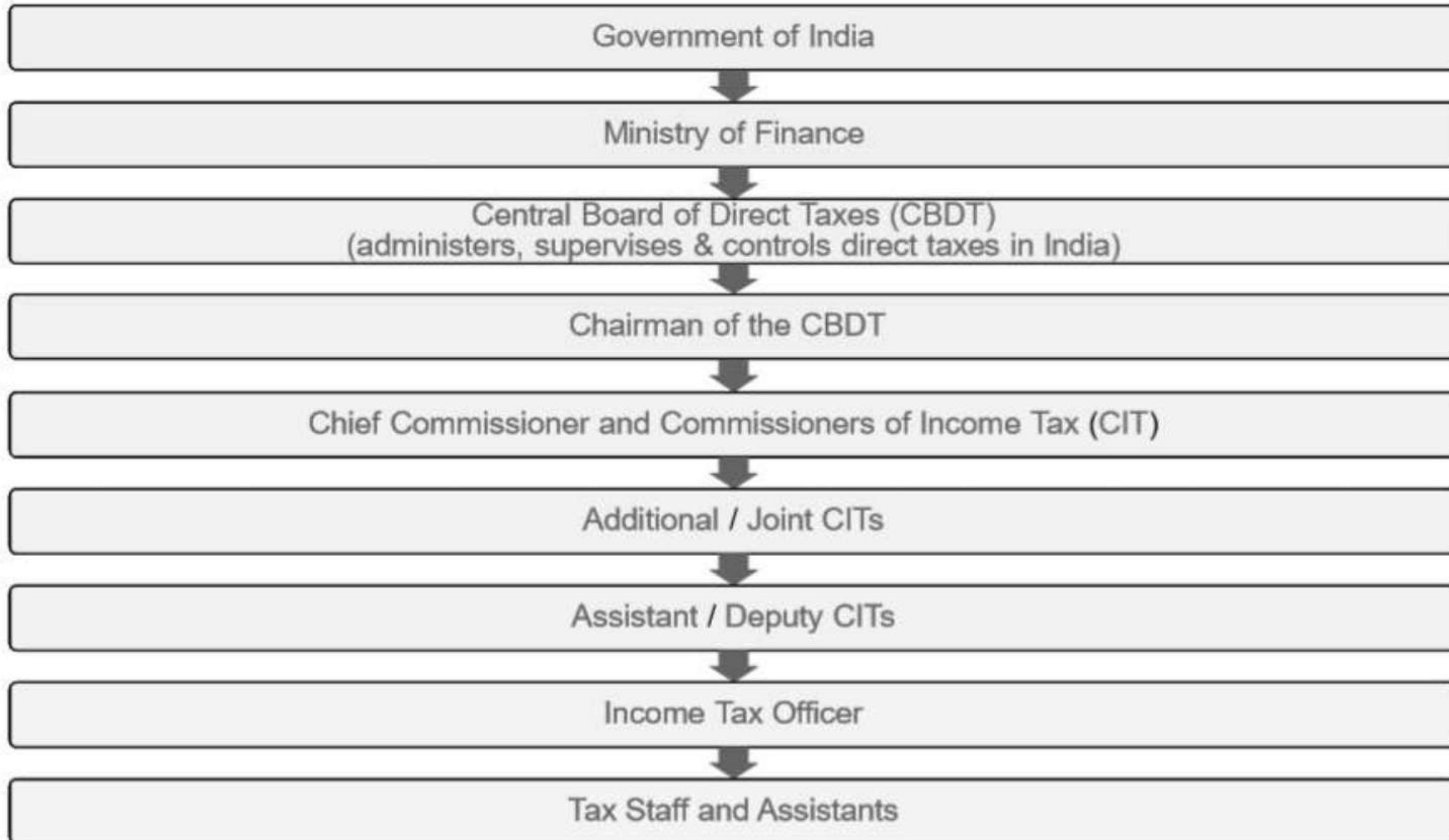
- Rajput jain & Associates, a professional firm, offers its clients a full range of services, To serve better and to bring bucket of services under one roof, the firm has merged with it various Chartered Accountancy firms pioneer in diversified fields

- Our main office is located at Delhi. Incidentally, Delhi is the Capital of India. Our other offices are in Mankapur & Moradabad (U.P.). We have associates all over India in big cities. All our offices are well equipped with latest technological support with updated reference materials. We have a large team of professionals other than our Core Team members to meet the requirements of our prospective clients including the existing ones. However, considering our commitment towards high quality services to our clients, our team keeps on growing with more and more associates having strong professional background with good exposure in the related areas of responsibility. Further to meet the growing demands of the fiercely competitive market we are constantly looking forward for team of associates comprising of highly skilled professionals to cater the needs ever increasing clientele.

Basic understanding of direct tax law in India



Hierarchy of Indian tax management



Types of Corporate Tax

Corporate tax

- Corporate tax is levied on domestic companies that are different from the shareholders. This tax is also payable by foreign corporations whose income arises or is deemed to arise in India. Income earned as interest, royalties, dividends, technical services fees, or gains through the sale of assets based in India is taxable. Corporate tax also includes the following:

Minimum Alternate Tax (MAT)

- Levied on zero tax companies whose accounts are prepared as per the guidelines of the Companies Act.

Fringe Benefits Tax

- Such direct tax is paid by companies on fringe benefits (drivers, maids, etc.) provided to employees.

Dividend Distribution Tax (DDT)

- This tax is levied on any amounts that are declared, distributed, or paid by domestic entities as dividends to the shareholders; foreign companies are exempt from DDT.

Securities Transaction Tax (STT)

- This liability arises from income earned through taxable securities transactions.

Corporate Tax Rates

Corporate Tax Rates for FY 2019-20 (AY 2020-21)

Type of Company	New Corporation Tax Rate	Additional Benefit/Requirements
Corporations not seeking any incentives/exemptions	22% (earlier 30%) + applicable cess and surcharge. Effective corporate tax rate of 25.17%	No MAT (minimum alternative tax) payable by these companies
Corporations seeking incentives/exemptions	Unchanged at 30%	MAT rate reduced to 15% from earlier level of 18.5%
New Manufacturing Companies	15% (earlier 25%)	New manufacturing co. must be incorporated on or before October 2019. Must start production before March 2023

Corporate Tax Rate in India

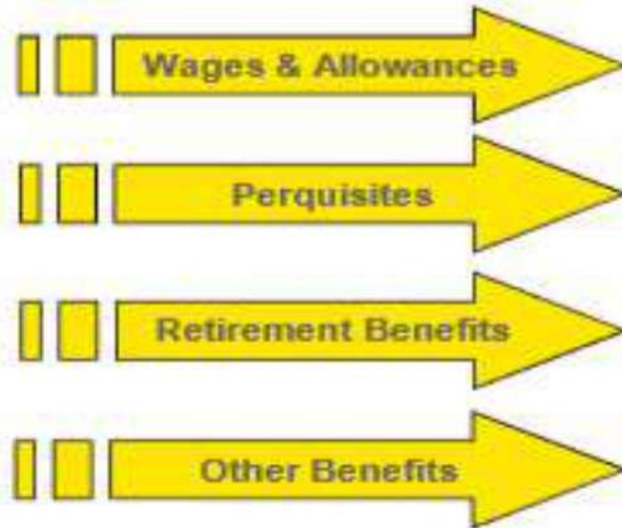
Type of Company	Corporate Tax Rate	Surcharge on Net Income Less than Rs. 1 crore	Surcharge on Net Income greater than Rs. 1 Crore and less than Rs. 10 Crore	Surcharge on Net Income greater than Rs. 10 Crore
Domestic with annual turnover upto Rs 250 Crore	25%	Nil	7%	12%
Domestic Company with turnover more than Rs 250 Crore	30%	Nil	7%	12%
Foreign Companies	40%	Nil	2%	5%

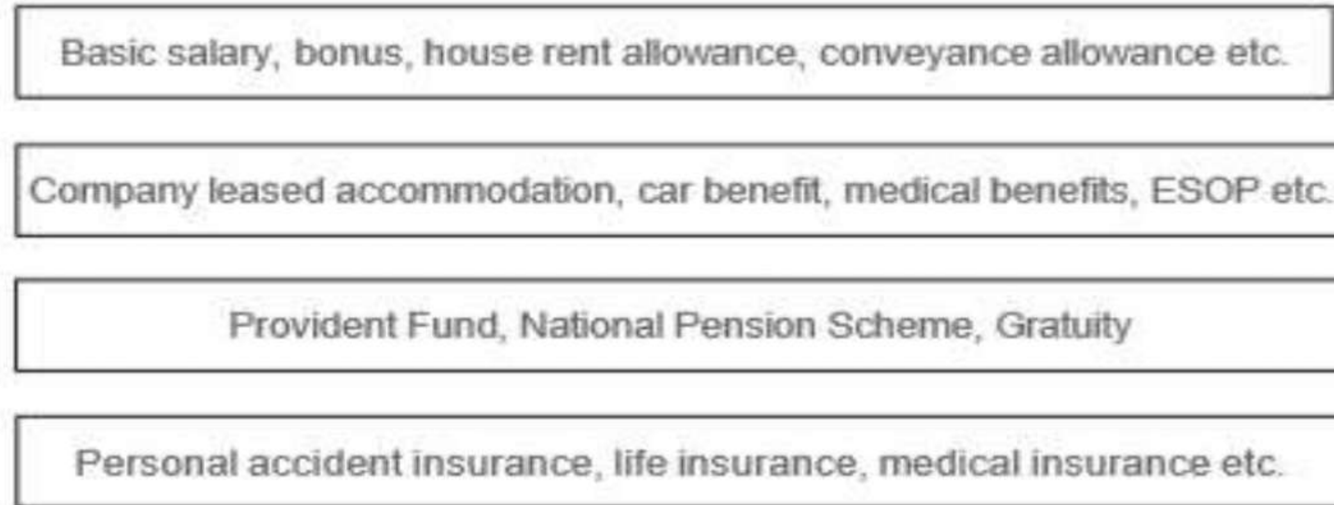
Income from Salary

Pre-conditions for charge for salary

- Employer - Employee relationship
- Salary should be due or received [Section 15]
- For residents, global salary income taxable [Section 5(1)]
- For NR and NOR, salary received or deemed to be received, accruing or deemed to accrue or arise in India is taxable [Section 5(2) & Section 9(1) (ii)]

Components of Salary are





Income from House Property

- Annual Value of the property consisting of buildings or lands appurtenant thereto of which assessee is the owner is taxable
- Property occupied for the business or profession purpose excluded

► Annual Value

- Reasonable Rent; or
- Actual Rent if it exceeds reasonable rent; or
- In case of vacant property, actual rent received

► Deductions

- 30% of the annual value
- Interest on borrowed capital

► Self occupied property

- Annual value taken as 'Nil'
- No deduction of 30% available
- Interest deduction up to Rs 2 lacs

Income from Profits or gains of business or profession

- Chargeability is established under Section 28. Below are few examples from the list
- Profit/ Gains from any business/ profession
- Profit on sale of import entitlement license
- Value of benefit arising from any business/ profession
- Income from speculative transaction
- Income received fro under key man insurance policy
- Any interest/ salary/ bonus/ commission/ remuneration received by a partner of a firm

Statement of Computation of Income

S. No	Particulars	Amount
1	Net Profit before tax for the year as per Profit and Loss Account	XXX
2	Add: Items specifically disallowed (eg disallowances under Section 40A(7), 43B, 40(a), etc) and upward adjustment on account of application of ICDS	XXX
3	Less: Items specifically allowed (eg Section 32, allowances on payment basis (gratuity, bonus), etc) and downward adjustment on account of application of ICDS	XXX
4	Net taxable profits (3-4)	XXX

Income from Capital Gains

Basics

- “Transfer” of a Capital Asset (other than personal effects) during the previous year
- Certain transactions not regarded as “transfer”
- Long Term vs Short Term Capital Asset
- Deductions

  - Expenditure in connection with the transfer
  - Cost of acquisition
  - Cost of improvement
  - Indexation benefits for residents
  - Forex fluctuation benefit for non-residents

- Exemptions (Section 54 to 54F)

Income from Other Sources

- Residuary head of income

Illustrative list

- Dividends
- income from lottery, horse race etc
- interest from bank deposits
- family pension
- insurance commission

Deductions

- Expenditure laid out wholly and exclusively for the purpose of making or earning the income
- No deduction if the income does not form part of total income
- No deduction for personal expenses, capital expenditure

Taxes and Return

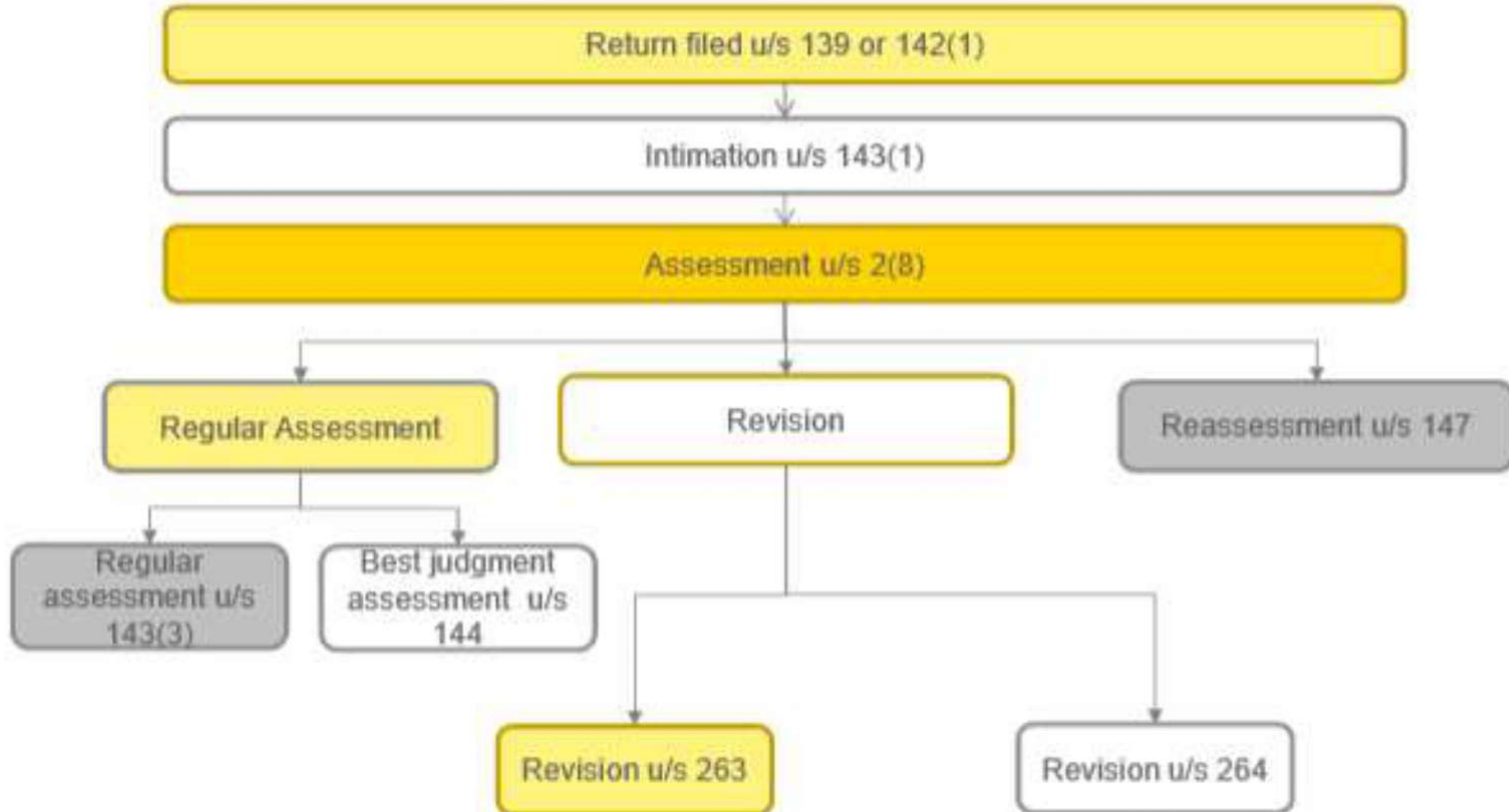
Obligation to File Return of Income

It is mandatory to furnish ROI if the following conditions are satisfied (irrespective of the fact whether the person has taxable income or not) –

- the person is resident in India (but other than not ordinarily resident); and
- he or it holds, as a beneficial owner or otherwise, any asset (including financial interest in any entity) located outside India or signing authority in any account located outside India; or
- he or it is a beneficiary of any asset (including any financial interest in any entity) located outside India
- The above provisions are not applicable if the concerned person is a non-resident or if he/ it is resident but not ordinarily resident in India for the relevant AY

Assessee	Minimum income to attract the provision of filing the ROI
Company	Any income or loss
Firm	Any income or loss
A person other than a company or a firm	Income (without claiming deduction under sections 10A, 10B, 10BA,10(38) and chapter VI-A) exceeds the amount which is not chargeable to income-tax
Person in receipt of income derived from property held under trust for charitable or religious purposes	Income (without giving exemption under section 11 and 12) exceeds the amount which is not chargeable to income-tax,

Assessment & Reassessment- Overview



Letter of Intimation u/s 143(1)

- An income tax return can be either filed voluntarily under Section 139 or on demand by the income tax department under Section 142(1). It is necessary to understand what happens after the taxpayer has filed the return of income.

- Income tax department carries out a preliminary assessment of all the returns filed and informs taxpayers of the result of such preliminary assessment. This assessment primarily includes arithmetical errors, internal inconsistencies, tax calculation and verification of tax payment. Such communication to the taxpayer post the preliminary assessment is called intimation under Section 143(1).
- The preliminary assessment is wholly computerized and does not have any human intervention and is delegated to Centralized Processing Center (CPC).

Notice sent u/s 143(2)

When the income tax department finds discrepancies, minor or major, in income tax returns, a notice will be issued under Section 143(2). The discrepancies can be under-reporting income or over-reporting losses. The notice is issued to make sure that you have not underpaid tax in any way.

Types of notices u/s 143(2)

- **Limited Scrutiny:** This is a Computer-Assisted Scrutiny Selection (CASS) where cases are selected based on set parameters. These are cases with inaccurate returns information or mismatches. The scrutiny will be limited to the particular area of return mentioned in the notice such as the claim of foreign tax credit or sale of a property.
- **Complete Scrutiny:** A complete scrutiny will be carried out on the return filed and all supporting documents. The cases will be flagged based on CASS. Though the scope of scrutiny is not limited in this type, the assessing officer cannot verify documents beyond the particular assessment year.
- **Manual Scrutiny:** Cases are selected for complete scrutiny based on the criteria defined by the Central Board of Direct Taxes; the criteria may vary every year.

Section 143(3) Scrutiny Assessment

Income tax assessment is the process of verification of the information a taxpayer has provided in the returns submitted by a taxpayer to the income tax department. An assessment is carried out by the Income Tax department after the **filing of an income tax return** by an assessee. The purpose of conducting the assessment is for the Income Tax department to verify the return filed for correctness with respect to the amount of taxable income declared and tax paid.

- **Scrutiny Assessment**
- Scrutiny assessment under Section 143(3) is a detailed assessment of an income tax return filed by a taxpayer. In a scrutiny assessment, a tax officer would perform various tests and processes to confirm the correctness and genuineness of various claims, deductions, and so on, made by the taxpayer in the income tax return. The objective of a scrutiny assessment is to ensure that the taxpayer has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner.
- Scrutiny assessment under Section 143(2) would be applicable for the following scenarios:
- An income tax return has been filed under **Section 139** or in response to an income tax notice under Section 142(1).
- The Assessing Officer or Income Tax Authority deems it necessary or expedient to ensure that the taxpayer has not understated the income or has not computed excessive loss or has not under-paid income tax in any manner.

Income Escaping Assessment

Income Escaping Assessment under **section 147** is the assessment which is done by the Assessing Officer if there is a reason for him to believe that income chargeable to tax has escaped assessment for any assessment year. It gives power to him to re-assessment or re-computation of income, turnover etc. which has escaped assessment.

- **Objective**
- The objective of carrying out Income Escaping Assessment u/s 147 is to bring any income which has escaped assessment in the original assessment under the tax net.
- The proceedings under Section 147 are for the benefit of the revenue and not an assessee and are aimed at gathering the 'escaped income' of an assessee. The same cannot be allowed to be converted as 'revisional' or 'review' proceedings at the instance of the assessee, thereby making the machinery unworkable.

Notice for Income Escaping Assessment issued under section 148

If the Assessing Officer has a reason to believe that any income has escaped assessment for any assessment year which was chargeable to tax, then the notice may be issued under section 148:

- **Case 1:** Within **4 years** from the end of the relevant assessment, if the escaped income is less than **Rs. 1,00,000.**
- **Case 2**: If the income which is escaped is equal to or more than **Rs. 1, 00,000** then notice can be issued for up to 6 years from the end of the relevant assessment year.
- **Case 3:** If escaped income is associated with any assets located outside India, and then notice can be issued **up to 16 years** from the end of the relevant assessment year. It includes financial interest in any entity.
- It may be noted that the notice u/s 148 can be issued by AO only after getting prior approval from the prescribed authority mentioned in section 151.

Cases where Income chargeable to tax has deemed to Escaped assessment

(*a*) When the total income of any assessee during the previous year exceeded the maximum amount which is not chargeable to income-tax and no return has been furnished by him.

(*b*) When Assessing Officer has noticed that the assessee has understated the income or has claimed an excessive loss, deduction, allowance or relief in the return and no assessment has been made.

(*c*) When an assessee is required to furnish a return under section 92E about any international transaction and he failed to do so.

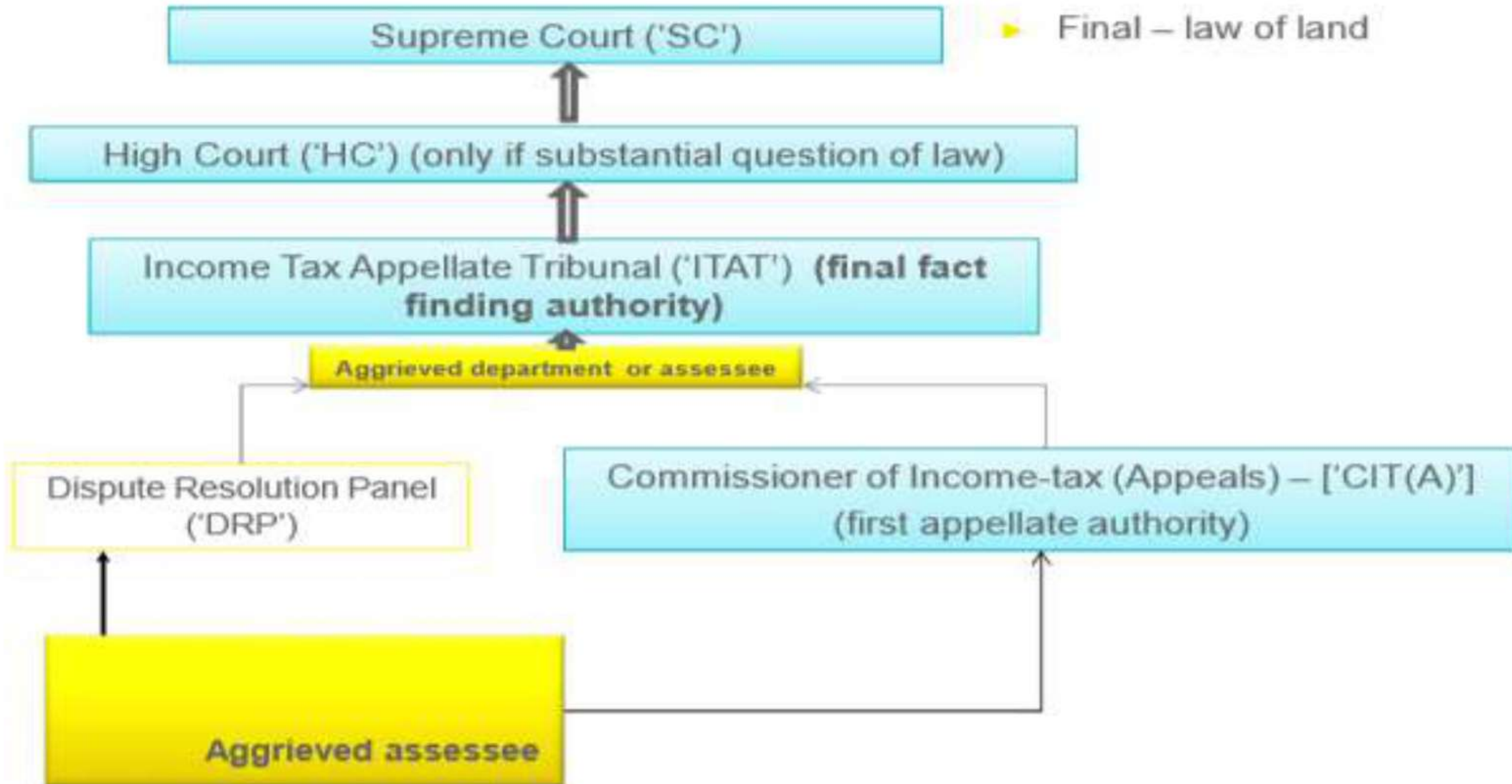
(*d*) In the case where an assessment has been made, but

- Income chargeable to tax has been under assessed.
- The income which is assessed is being assessed at a rate which is too low.
- Such income has been made the subject of excessive relief under this Act.
- Excessive loss or depreciation allowance or any other allowance under this Act has been computed.
- Where a person is found to have any asset located outside India. It includes the financial interest in any entity.

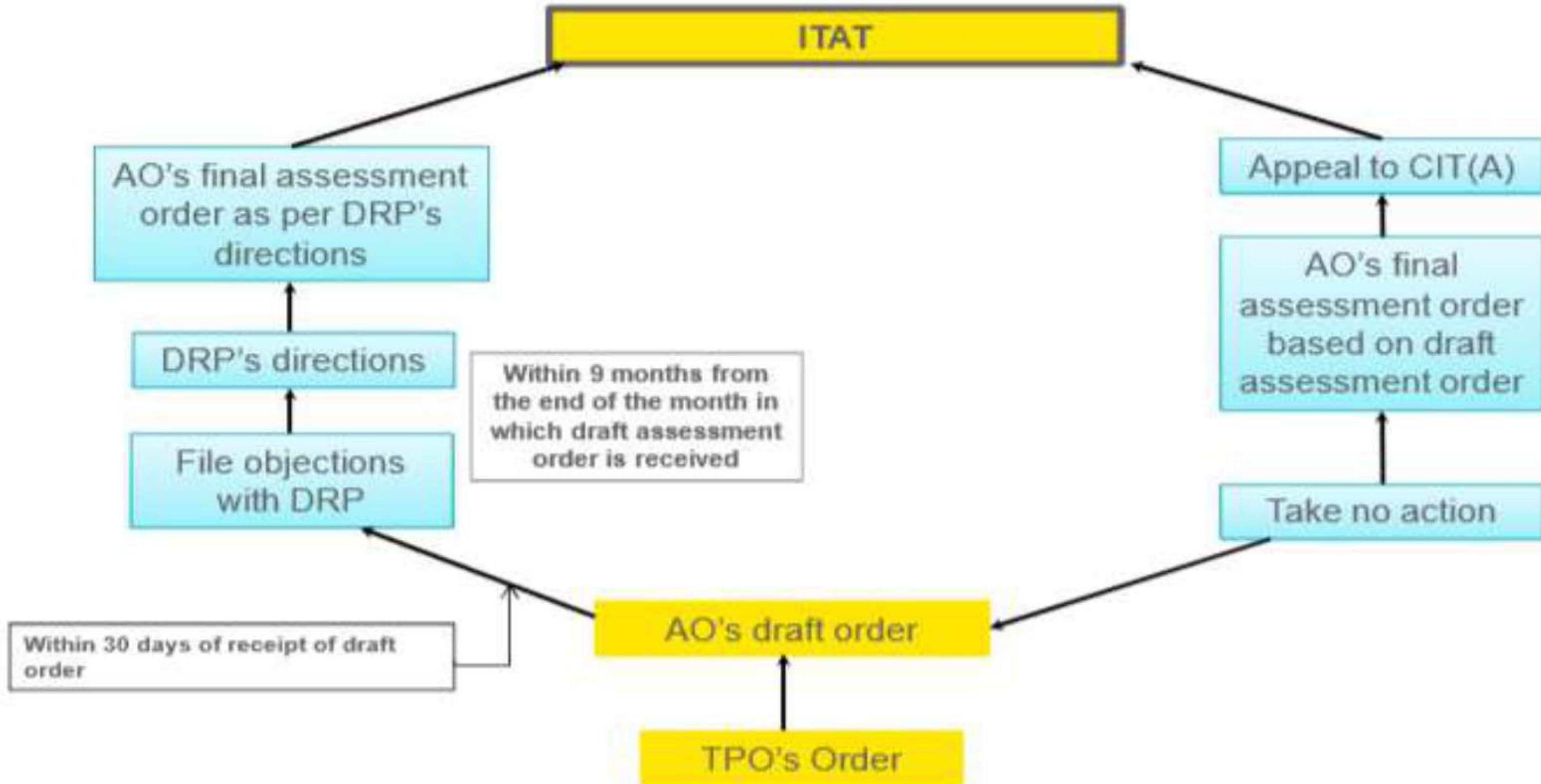
Submission of return after order in section 148

- The assessee shall submit the return within the time period prescribed in the Notice of Income Escaping Assessment. Assessee may demand reasons of proceeding u/s 147 from AO. If such reasons are not demanded by the assessee, the AO can proceed to complete assessment. If the assessee demands reasons, the AO must provide reasons to the assessee. Assessing officer is duty bound to provide the copy of reason recorded within the reasonable time as per guidelines of Hon’ble Supreme Court.

Appellate Hierarchy



Twin Routes CIT(A) and DRP



International Taxation

International taxation is necessary, because globalization leads to an erosion of national tax systems. Global players and international investors use liberalization and deregulation, tax loopholes and tax havens to save taxes on a large scale. Currently we are experiencing a re-feudalization of tax systems, i.e. the economically powerful pay less and less and the tax burden on middle and lower incomes increases. This leads to a permanent structural crisis in public finances and a massive redistribution from below to the top. However, the production or maintenance of global public goods like environment, education, health, etc. requires additional financial resources. International taxes can play a major role in regulating and shaping globalization, both with regard to their steering effect, for instance ecologically, distributive or regulatory, as well as through the tax revenues themselves. Contrary to the widespread belief of taxes being „evil“ we insist on their role as a counterbalance to the „free market“ and as an instrument for enforcing social justice and ecological sustainability.

In relation to this, the legitimacy problems of international taxes are discussed ("no taxation without representation„). Referring to Habermas we argue that economic globalization leads to an erosion of democracy on the national level. Therefore, international taxes are seen as a means to regain options democratic decision making for democratic nation states. In this way, international taxes can derive some of their legitimacy without the existence of a democratic representation on the international or even global level.

What Is a Tax Treaty?

A tax treaty is a bilateral—two-party—agreement made by two countries to resolve issues involving double taxation of passive and active income. Tax treaties generally determine the amount of tax that a country can apply to a taxpayer's income, their capital, estate, or wealth. Some countries are seen as being tax havens. These countries typically do not enter into tax treaties.

Tax Treaty Explained

- When an individual or business invests in a foreign country, the issue of which country should tax the investor's earnings arises. Both countries – the source country and the residence country – may enter into a tax treaty to agree on which country should tax the investment income to prevent the same income from getting taxed twice.
- The source country is the country that hosts the inward investment and is also known as the capital-importing country. The residence country, or capital-exporting country, is the investor's country of residence.

Objectives of Tax Treaties

1. Elimination of double taxation
2. Promotion of mutual economic relations, trade and investment
3. Certainty on nature of income and quantum of tax payable irrespective of tax laws of overseas state
4. Establishing the right of a country to tax any income stream
5. Exchange of information to combat tax avoidance / tax evasion

Carry forward of losses

Sections	Particulars
Section 32(2)	Unabsorbed depreciation
Section 70	Inter source set-off
Section 71	Inter head set-off
Section 72	Carry forward and set-off of business loss
Section 72A	Carry forward and set-off of accumulated loss and unabsorbed depreciation in amalgamation or demerger etc.
Section 72AA	Carry forward and set-off of accumulated loss and unabsorbed depreciation in scheme of amalgamation of banking companies
Section 73	Losses in speculation business
Section 74	Losses under the head Capital Gains
Section 78	Carry forward and set-off of losses in case of change in constitution of firm or on succession
Section 79	Carry forward and set-off of losses in case of certain companies
Section 80	Submission of Return of losses

Section 72A

Carry forward and set-off of accumulated loss and unabsorbed depreciation in amalgamation or demerger, etc.

Amalgamation:

- Where there has been an amalgamation of a specified company*, accumulated loss and the unabsorbed depreciation of the amalgamating company shall be deemed to be loss or unabsorbed depreciation of the amalgamated company for the previous year in which amalgamation is effected.
- Above benefit is allowed to amalgamated company only if prescribed conditions as mentioned under section 72A of the ITA and Rule 9C of Income Tax Rules, 1962 are satisfied.
- If the conditions prescribed under section 72A are not complied with, the set-off of loss or allowance of depreciation made in any previous year shall be deemed to be income of amalgamated company in the year in which such conditions are not complied with.

Meaning of specified company – Company owning industrial undertaking or a ship or a hotel or a banking company or one or more public sector companies engaged in the business of operation of aircraft.

Demerger:

- Accumulated loss and unabsorbed depreciation of the demerged company which is directly related to the undertaking/s transferred, resulting company can carry forward and set-off such losses.
- In other cases, such losses and unabsorbed depreciation should be apportioned between demerged company and resulting company based on the proportion in which assets of the undertakings have been retained by the demerged company and transferred to the resulting company.

Section 79 : Carry forward and set-off of losses in case of certain companies

Where in any previous year, there has been a change in the shareholding of a closely held company, any unabsorbed loss of the company shall be allowed to be carried forward and set off against the income of the current previous year only if the shareholders holding not less than 51% beneficial interest in voting power has remained the same as that of the shareholding in the previous year when the loss to be carried forward was so incurred.

Objective of the section

- A company has a legal status, separate from its shareholders, which remains intact although the shareholders may go on changing from year to year.
- It is thus possible for a few persons to acquire the shares of the companies, which have sustained losses in earlier years, and then commence to carry on profitable business through such companies.
- By using the above means these shareholders are able to reduce the tax liability through securing set-off of losses of earlier years made when the shares in the company were held by different shareholders.
- To safeguard revenue against loss arising from such transactions of the kind mentioned above, the provisions of sections 79 were enumerated

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