

Income-tax Scrutiny of Political Contributions under Section 80GGC: Legal Framework and Practical Approach.

Introduction

In recent assessment cycles, the Income-tax Department has initiated scrutiny proceedings in a significant number of cases where assesseees have claimed deduction in respect of political donations under section 80GGC of the Income-tax Act, 1961. Notices have been issued seeking explanations regarding the genuineness of such donations, primarily based on information stated to have been received from the Investigation Wing of the Department.

This article attempts to analyse the legal framework governing such scrutiny proceedings, the procedural safeguards available to assesseees, and the practical approach that professionals may adopt to effectively represent such cases during assessment and appellate stages.

Background of the Issue

It is understood that search and survey actions were carried out by the Investigation Wing in the case of certain political parties and related entities. Based on materials allegedly gathered and statements recorded during such proceedings, the Department has formed a view in several cases that political donations claimed under sections 80GGB and 80GGC represent accommodation entries, wherein donations are made through banking channels and the equivalent amount is allegedly returned to donors in cash after deducting commission.

Based on such information, scrutiny proceedings have been initiated against donors, and deductions claimed under section 80GGC are being proposed for disallowance.

Statutory Framework – Section 80GGC

An assessee is entitled to deduction under section 80GGC subject to fulfilment of the following statutory conditions:

1. The donation is made to a political party registered under section 29A of the Representation of the People Act, 1951.
2. The donation is not made in cash and is routed through prescribed banking channels.

Where the above conditions are satisfied, the deduction is allowable under the Act.

Key Legal and Procedural Issues in Scrutiny Proceedings

Based on assessment notices and proceedings observed in practice, the following issues commonly arise and should be addressed appropriately during assessment itself to strengthen appellate remedies.

1. Fulfilment of Conditions under Section 80GGC

The assessee should place on record documentary evidence establishing that:

- The political party is duly registered.
- The donation has been made through banking channels.
- Donation receipts and bank statements corroborate the transaction.

Once statutory conditions are fulfilled, the initial onus cast upon the assessee stands discharged.

2. Non-furnishing of Investigation Wing Material

In many cases, proposed disallowance is stated to be based on information received from the Investigation Wing. However, such material is often not furnished to the assessee.

It is settled law that any material relied upon by the Assessing Officer for drawing adverse inference must be made available to the assessee. Accordingly, a specific

request should be made during assessment proceedings seeking copies of all materials relied upon.

3. Non-supply of Alleged Statements and Evidence

The Department frequently refers to statements allegedly recorded from political party officials or intermediaries regarding an alleged modus operandi. However, such statements are often not supplied to the assessee.

In absence of such material being furnished, no adverse inference can be drawn against the assessee.

4. Violation of Binding Judicial Principles and CBDT Instructions

Judicial precedents consistently hold that:

- Information from the Investigation Wing is only a starting point.
- The Assessing Officer must conduct independent enquiry.
- Relied-upon material must be supplied to the assessee.

Failure to adhere to these principles vitiates the assessment proceedings.

5. Absence of Assessee's Name in Alleged Statements

Where reliance is placed on third-party statements, the assessee should specifically seek clarification as to whether:

- The assessee is named or identified in any statement or evidence.

In absence of specific reference to the assessee, generalized allegations cannot sustain disallowance.

6. Right to Cross-examination

If the Assessing Officer relies upon statements of third parties, the assessee has a vested right to cross-examine such persons. Any addition made without granting such opportunity is contrary to principles of natural justice.

7. Lack of Independent Satisfaction by the Assessing Officer

Assessment notices often do not disclose independent reasoning or satisfaction recorded by the Assessing Officer. The assessee may request a speaking order reflecting application of mind, rather than mechanical reliance on third-party information.

8. Absence of Evidence of Routing Back of Funds

Allegations of routing back of funds must be supported by cogent evidence such as:

- Cash trail
- Bank withdrawals
- Statements specifically implicating the assessee

In absence of such evidence, the allegation remains unsubstantiated.

9. Additions Based on Presumption and Generalisation

Disallowance of deduction cannot be sustained merely on assumptions or generalised observations drawn from other cases, without specific evidence against the assessee.

10. No Evidence of Assessee Being a Beneficiary

The burden lies on the Department to establish that:

- The assessee was a beneficiary of any accommodation entry.
- The assessee had knowledge of or participation in any alleged arrangement.

Absent such proof, the allegation lacks legal sustainability.

11. Absence of Corroborative Financial Evidence

No addition can be made without corroborative material such as:

- Cash withdrawals
- Ledger entries

- Confirmatory statements

Mere suspicion cannot replace proof.

12. Violation of Principles of Natural Justice

Reliance on third-party material without:

- Supplying copies thereof, and
- Granting opportunity of cross-examination,

renders the assessment vulnerable to being set aside.

13. Role of Affidavit

In circumstances where negative facts are alleged, an affidavit by the assessee affirming the genuineness of the donation assumes importance. Judicial precedents have held that an uncontroverted affidavit must be accepted as evidence.

Conclusion

Scrutiny proceedings relating to political donations under section 80GGC require careful handling at the assessment stage itself. While the Department is empowered to verify claims, such verification must adhere to statutory provisions and principles of natural justice. Assesseees and professionals must ensure that all procedural safeguards are invoked during assessment to effectively protect their rights in appellate proceedings.

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