

**1. Questionnaire No. 6 of notice dated 23.10.2019 and similar question was asked in notice dated 28.08.2019 in Questionnaire No. 27:**

1.1. In this point, your good self issued show cause as to why unaccounted money credited in bank accounts of A, B and C, amounting to Rs. 1,23,42,750/- over the 8 financial years i.e. F.Y. 2010-11 to F.Y. 2017-18, should not be treated as assessee's unexplained income and added to the income for relevant years. In this regard, your good self provided the detail of money credited into the bank accounts of A, B and C, which is reproduced as under:

| <b>FY</b>    | <b>A (Account No. 01222010075130)</b> | <b>C (Account No. 0577000100057183)</b> | <b>B (Account No. 01222010076940)</b> |
|--------------|---------------------------------------|---|---------------------------------------|
| 2010-11      | 6,33,621                              | 15,000                                  | 4,16,760                              |
| 2011-12      | 32,025                                | 0                                       | 4,499                                 |
| 2012-13      | 15,76,521                             | 73,150                                  | 5,25,782                              |
| 2013-14      | 24,01,766                             | 0                                       | 10,84,503                             |
| 2014-15      | 6,14,608                              | 15,000                                  | 2,84,628                              |
| 2015-16      | 16,384                                | 9,00,000                                | 9,15,716                              |
| 2016-17      | 20,820                                | 0                                       | 2,66,603                              |
| 2017-18      | 25,30,034                             | 0                                       | 15,330                                |
| <b>Total</b> | <b>78,25,779</b>                      | <b>10,03,150</b>                        | <b>35,13,821</b>                      |

1.2. In respect of above table, it is apparent that the allegation of Rs.36,524/- pertains to this year (i.e. A.Y. 2012-13), such as Rs.32,025 in respect of A and Rs.4,499 in respect of B. Hence the submission in respect of rest allegation will be provided in the relevant year. Thus, in respect of allegation of money credited in the bank account of A and B in F.Y. 2011-12 amounting to Rs.36,524/- our submission is provided as under:

1.3. That A and B are separate assesseees and are regularly filing their income tax returns for many years. Also, it is submitted that the allegation raised by your good self is in respect of money credited in the bank account of third parties, who are different assesseees and assessed separately. However, in respect of such allegation, it is submitted that the A and B have considered the impugned account in their ITR and offered the relevant income to tax. The relevant documents are provided as under:

| <b>Name</b> | <b>ITR and computation of A.Y. 2012-13, at Page No.</b> | <b>Bank statement of the period 01.04.2011 to 31.03.2012, , at Page No.</b> |
|-------------|---|---|
| <b>A</b>    | <b>45-46</b>  | <b>47</b>   |

|   |       |    |
|---|-------|----|
| B | 48-49 | 50 |
|---|-------|----|

- 1.4. Thus, from the perusal of the bank statement, it is clearly evident that the credit amount in alleged bank account of A and B is not related to the assessee. The relevant income credited in the bank is offered to tax. As such, the addition of alleged amount Rs.36,524/- should not be made in the hands of assessee for A.Y. 2012-13 as the same leads to taxing of same amount in the hands of two different assessee's
- 1.5. **Further**, your good self is kindly requested to provide the detail of alleged amount of Rs.36,524/-for A.Y. 2012-13i.e. 'how the same is computed' and provide the evidence to substantiate that the same is unaccounted money of the assessee i.e. 'from which source assessee can earn unaccounted money', 'persons from whom assessee received such money, etc.
- 1.6. **Furthermore**, it is apparent in this point that your good self raised allegation on the basis of statement of the assessee recorded during the search/s 132(4) of the Act. Your good self has alleged that the assessee has admitted in his statement that the unaccounted proceeds of M/s XYZ are parked in the name of Smt. B.

In respect of above, it is submitted that during the search, the assessee was pressurized to admit such spurious statistic which have no relevance in reality. Has there been any truth behind such facts, then any incriminating material should be found at the time of search. However, as per our understanding, no such material was found apart from the statement of the assessee which was recorded under compulsion. The statement so recorded u/s 132(4) of the Act was tutored to the assessee. **As such, statement u/s 132 of the Act, given under pressure/ coercion should not be made sole basis for addition.**

Reliance placed on the CBDT Instruction (F. No. 286/2/2003-IT (Inv. II), dated 10-3-2003), the instruction provided as under:

*'It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income-tax Department. Similarly, while recording statement during the course of search & seizure and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.'*

However, in the instant case, no evidence was found during the search to support such false facts. Reliance placed on following judicial pronouncements as under:

- a) **Chetnaben J. Shah legal heir of Jagdish Chandra K. Shah vs ITO Tax Appeal No. 1437 of 2007 (Gujarat High Court)**
- b) **DCIT vs Narendra Garg & Ashok Garg (AOP) [2016] 72 taxmann.com 355 (Gujarat High Court)**

- 1.7. Here, it is important to note that as per provisions of Income Tax law, income should be taxed in the hands of the person to whom it belongs i.e. the owner of the income. In respect of this, as per section 4 read with section 2(31) of the Act, it is no uncertain terms, that the tax shall be charged on the total income of every person. Further, the term 'Person' has been defined in clause 31 of section 2, to include seven categories of persons, all of which are independent and distinct from each other. A literal interpretation of the above provisions leads to the conclusion that only a right person as per the Act, is liable to pay tax on his/her income and no option is available to tax income in the hands of the person other than the one in whose hands it is taxable. Also, in the light of the judgement of the Hon'ble Supreme Court in case of **ITO vs. Ch. Atchiaiah [1996] 218 ITR 239 (SC)**, it has held that the AO must tax the right person alone.
- 1.8. Thus, on the basis of above discussion, your good self is requested to kindly drop this allegation as the income alleged to be taxed by your good self does not belong to the assessee. Also, as per provisions of law, correct income should be taxed in the correct hands in the correct year only. However, if your good self has come across to any specific document, which as per your good self is solely pertain to the assessee, then you are requested to please specify the same and establish the nexus of the same with the assessee as well, because the respective bank accounts are already disclosed/ considered by A and B in their respective ITR's and relevant income is offered for tax. Also, the assessee shall be too pleased to file the explanation in respect of such specific document.