

Practical Case Study on 'e-Assessment' u/s 143

Receipt of Share Capital/ Share Premium

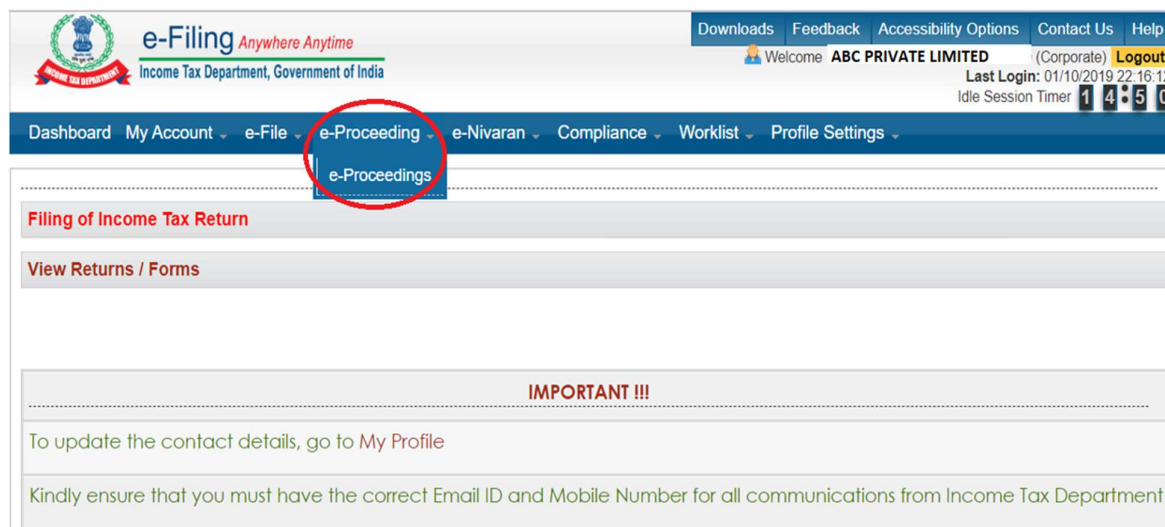
1.1 Case Study on Issue of Receipt of Share Capital/ Share Premium Money u/s 68 & 56(2)

The receipt of share capital money / share premium money is one of the most common subject matter of scrutiny consideration under CASS and as such the assesses in the receipt of such share capital/ share premium money in any particular assessment year are bound to get a scrutiny notice u/s 143(2) of the Act.

On receipt of such notice, the assessee is required to explain the nature and source of receipts of such share capital/ share premium money and to establish the identity, and creditworthiness of the investor entities and genuineness of such receipts in order to discharge his statutory onus u/s 68 of the Income Tax Act.


The assessee is also required to justify the receipt of share premium money as per mandated valuation norms stipulated in section 56(2) of the Income Tax Act.

Let us begin our practical discourse in this regard by visiting the 'e-Proceeding' tab in the registered e-filing account of the assessee in the ITBA module of the Income tax department website.



Step 1: Click 'Assessment Proceedings' u/s 143(3)' hyperlink:

To view the regular assessment proceeding details u/s 143(3), the assessee needs to click on the **hyperlink 'Assessment Proceeding u/s 143(3)'**, which is available under the tab '**Proceeding Name**'.


e-Filing *Anywhere Anytime*
Income Tax Department, Government of India

[Downloads](#)
[Feedback](#)
[Accessibility Options](#)
[Contact Us](#)
[Help](#)

Welcome **ABC PRIVATE LIMITED** (Corporate) [Logout](#)
Last Login: 26/09/2019 12:46:15
Idle Session Timer **1 4 4 0**

[Dashboard](#)
[My Account](#)
[e-File](#)
[e-Proceeding](#)
[e-Nivaran](#)
[Compliance](#)
[Worklist](#)
[Profile Settings](#)

e-Proceedings


PAN	Assessment Year	Proceeding Name	Opt for e-Proceeding	Proceeding Status	Proceeding Limitation Date	Proceeding Closure Date	Action
AAACA1234H	2018-19	Adjustment u/s 143(1)(a)	YES	Open	-	-	-
AAACA1234H	2017-18	Assessment Proceeding u/s 143(3)	YES	Open	31/12/2019	-	-
AAACA1234H	2018-19	Assessment Proceeding u/s 143(3)	YES	Open	30/09/2020	-	-

Note :

- Please note that even if you select No, all selected Notices and Letters will be available for viewing. However, option to submit response through e-Filing shall not be available.
- Please click on the **Proceeding Name** hyperlink to view the Proceeding Details
- In case of PAN users Assessment Year is taken into consideration. In case of TAN users Financial Year is taken into consideration.

Step 2. Selecting the Notice u/s 143(2)/142(1) to Respond:

In order to see the details of any particular scrutiny notice u/s 143(2), the assessee needs to click on the **hyperlink** under the tab '*Notice/Communication reference Id*'.


e-Filing *Anywhere Anytime*
Income Tax Department, Government of India

[Downloads](#)
[Feedback](#)
[Accessibility Options](#)
[Contact Us](#)
[Help](#)

Welcome **ABC PRIVATE LIMITED** (Corporate) [Logout](#)
Last Login: 26/09/2019 12:46:15
Idle Session Timer **1 4 4 3**

[Dashboard](#)
[My Account](#)
[e-File](#)
[e-Proceeding](#)
[e-Nivaran](#)
[Compliance](#)
[Worklist](#)
[Profile Settings](#)

e-Proceedings

PAN - AAACA1234H
Assessment Year - 2018-19
Proceeding Name - Assessment Proceeding u/s 143(3)

Notice/Communication reference ID	Notice u/s	Description	Issued On	Document ID	Served On	Response Due date	Response	Response viewed by AO on
100000031736219	143(2)	[ITBA]Notice u/s 143(2)of Income Tax Act 1961.	22/09/2019	ITBA/AST/S/143(2)/2019-20/1018157347(1)	-	07/10/2019	Submit	-

Back

Note :

- Please click on the **Reference ID** hyperlink to view the Notice Details.
- In order to submit the response click on the **Submit** hyperlink under Response Column.
- To View the details of submitted Response, please click on **View** hyperlink.
- u/s - under section

Step 3: Downloading the 'Scrutiny Assessment Notice u/s 143(2):

By clicking on the **hyperlink** under the tab '*Notice/Communication Reference ID*', the assessee will be able to see a '*computer generated communication*' containing the '*Link for downloading the pdf file containing the notice*'.

The assessee is required to click on the '**pdf hyperlink**' given at the bottom of the page to download the scrutiny notice.

Communications Details - 100000031736219		Response viewed by AO on
Notice/Comm reference 10000003173	Date: From: donotreply@incometax.gov.in To: taxation@abccompany.com Cc: accounts@abccompany.com Subject: [ITBA]Notice u/s 143(2)of Income Tax Act 1961. Dear ABC PRIVATE LIMITED , Please find attached the Notice u/s 143(2) for PAN:AAACA1234H and AY:2018-19. Please quote your PAN in all future correspondences. Note: - This communication is computer generated and may not contain signature. - This communication may be treated as compliant with the requirements of Income Tax Rules 127 and 127A. - Signed copy may be sent separately if not already digitally signed. - Please quote your PAN in all communications. - Income Tax Department does not seek any taxpayer information like user name, password, details of ATM, credit cards, etc. Taxpayers are advised not to part with such information on the basis of emails.	
	Notice /Letter pdf Notice Issue Date- 22/09/2019 30203272 35747150-AAACA1234H _Notice us 143(2)_1018157347(1)_22092019.pdf	
	Note : 1. Please click on the Notice/Letter PDF to download the notice details.	

The downloaded real time E-Assessment Notice issued u/s 143(2) of the Act as per Computer Aided Scrutiny Selection (CASS) looks like as under:



भारत सरकार/ GOVERNMENT OF INDIA
वित्त मंत्रालय/ MINISTRY OF FINANCE
आयकर विभाग/ INCOME TAX DEPARTMENT
विहित आयकर प्राधिकारी का कार्यालय / Office of the Prescribed Income-Tax Authority

सेवा में/ To, ABC PRIVATE LIMITED XYZ NAGAR NEW DELHI-11XXXX INDIA	
--	--

स्थायी लेखा संख्या/ PAN: AAACA1234H	निर्धारण वर्ष/ AY: 2018-19	नोटिस संख्या / Notice No.: ITBA/AST/S/143(2)/2019- 20/1018157347(1)	दिनांक/ Dated: 22/09/2019
---	--------------------------------------	---	-------------------------------------

आयकर नियम 1962 के नियम 12 ड के साथ पठित आयकर अधिनियम 1961 की धारा 143 (2) के अधीन नोटिस

Notice under section 143(2) of the Income-tax Act, 1961 read with Rule 12 E of Income Tax Rules, 1962

**संवीक्षा (जांच) (कंप्यूटर आधारित संवीक्षा चयन)
Scrutiny (Computer Aided Scrutiny Selection)**

प्रिय करदाता,
Dear Taxpayer,

आपके द्वारा निर्धारण वर्ष 2018-19 के लिए दिनांक 31/10/2018 को पावती सं. 363073501311018 के तहत आयकर विवरणी दाखिल करने के लिए आपको धन्यवाद।

Thank you for filing your return of income for Assessment Year 2018-19 vide Ack. no. 363073501311018 on 31/10/2018.

2. विवरणिका को तैयार करने में आपके ध्यान एवं परिश्रम को स्वीकार करते हुए, कुछ मुद्दों पर और स्पष्टीकरण की आवश्यकता है, जिनके कारण आपकी आय विवरणिका को संवीक्षा (जांच) के लिए चुना गया है, ये मुद्दे प्रारंभ में निम्नानुसार हैं:

2. While acknowledging the care and diligence you may have taken in preparing the return, there are certain issues which need further clarification, for which your return of Income has been selected for scrutiny and such issues initially are as under:

S. No. Issues

(i) **Receipt of Share Capital/Premium Money**

3. उपरोक्त को ध्यान में रखते हुए उल्लेखित मुद्दों के उत्तर आप संबंधित दस्तावेजों (यदि कोई हों) सहित निर्धारण अधिकारी को 'ई-कार्यवाही' सुविधा में अपने ई-फाइलिंग वेबसाइट खाले के जरिए (www.incometaxindiaefiling.gov.in) अपनी सुविधानुसार, दिनांक 07/10/2019 तक या उससे पहले इलेक्ट्रॉनिक माध्यम से प्रस्तुत कर दें।

3. In view of the above, you may submit your response with supporting documents (if any) on the above mentioned issues to the Assessing Officer electronically in 'e-Proceedings' facility through your

Note: If digitally signed, the date of digital signature may be taken as date of document.


1. The Notice/Letter/Order No. mentioned above may be treated as DIN for the purpose of procedure for issuance of Income Tax Notice prescribed by Circular No.19/2019 dt. 14 August 2019.

2. This notice u/s 143(2) is issued by the Prescribed Income-tax Authority u/s 143(2) of the IT Act, 1961 notified by the CBDT vide notification No. 65/2019 dated 13 September 2019. This office does not have a physical address.

Step 4: Filing of 'e-Response' within 15 days of receipt of Notice u/s 143(2) of the Act

Under the 'New Scheme of E-Assessment 2019', the assessee is required to file his 'e-Response' to the Notice u/s 143(2) of the Act, within 15 days of the receipt of such notice.

For the purpose of filing/furnishing a '**reply**' in response to a notice u/s 143(2) read with section 142(1), the assessee needs to click on the hyperlink '**Submit**' present under the tab '**Response**' as shown below:



e-Filing *Anywhere Anytime*
Income Tax Department, Government of India

[Downloads](#)
[Feedback](#)
[Accessibility Options](#)
[Contact Us](#)
[Help](#)

Welcome **ABC PRIVATE LIMITED** (Corporate) [Logout](#)
Last Login: 26/09/2019 12:46:15
Idle Session Timer **1 4 4 3**

Dashboard
My Account
e-File
e-Proceeding
e-Nivaran
Compliance
Worklist
Profile Settings

e-Proceedings

PAN - AAACA1234H

Assessment Year - 2018-19


Proceeding Name - Assessment Proceeding u/s 143(3)

Notice/Communication reference ID	Notice u/s	Description	Issued On	Document ID	Served On	Response Due date	Response	Response viewed by AO on
100000031736219	143(2)	[ITBA]Notice u/s 143(2)of Income Tax Act 1961.	22/09/2019	ITBA/AST/S/143(2)/2019-20/1018157347(1)	-	07/10/2019	Submit	-

Back

Note :

1. Please click on the **Reference ID** hyperlink to view the Notice Details.
2. In order to submit the response click on the **Submit** hyperlink under Response Column.
3. To View the details of submitted Response, please click on **View** hyperlink.
4. u/s - under section



e-Filing *Anywhere Anytime*
Income Tax Department, Government of India

[Downloads](#) | [Feedback](#) | [Accessibility Options](#) | [Contact Us](#) | [Help](#)
 Welcome! **ABC PRIVATE LIMITED** (Corporate) [Logout](#)
 Last Login: 26/09/2019 12:46:15
 Idle Session Timer **1 2 1 9**

[Dashboard](#) | [My Account](#) | [e-File](#) | [e-Proceeding](#) | [e-Nivaran](#) | [Compliance](#) | [Worklist](#) | [Profile Settings](#)

e-Proceedings

PAN	AAACA1234H
Proceeding Name	Assessment Proceeding u/s 143(3)
Assessment Year	2018-19
Document Reference ID	100000031736219
Notice Section	143(2)
Response Type*	Partial Response ▼
Response/Remarks (Not exceeding 4000 characters)*	REPLY IN RESPONSE TO NOTICE U/S 143(2) OF THE ACT FOR THE A.Y. 2018-19

Sl. No.	Attachment Description	Attachment
1	<div style="border: 2px solid red; border-radius: 50%; padding: 5px; display: inline-block;"> Select ▼ </div>	<div style="border: 2px solid red; border-radius: 50%; padding: 5px;"> Attach scanned documents in .pdf, .xls, .xlsx and .csv format (Maximum 10 attachments with each not exceeding 50 MB) </div> <div style="margin-top: 5px;"> <input type="button" value="Choose File"/> No file chosen </div>

I declare that to the best of my knowledge and belief, the information furnished in the statement/statements is correct and complete and other particulars shown therein are truly stated.

Step 5: Attaching and Uploading of Supporting Records & Documents as Attachments along with the 'e-Response'.

The assessee is required to attach the relevant and applicable supporting records and documents as attachments by selecting the suitable and appropriate specified categories from the drop-down list and the attachments not falling in any of the specified categories by way of selecting the 'Others' option in the drop-down list. The assessee can attach scanned documents in .pdf, .xls, .xlsx, .csv format. A maximum of 10 attachments/ files with each attachment not exceeding 50 MB can be uploaded.

The specimen of an ideal 'e-response' to the notice u/s 143(2) of the Act, on the issue of receipt of share capital/share premium is reproduced below for the ready reference of the worthy readers.

ABC AND COMPANY
CHARTERED ACCOUNTANTS

Tax Chambers, New Delhi – 1100XX, Tel.: 011-12345678, Fax: 011-87654321

E-mail: abc@taxchambers.com

August 01, 2020

The ACIT (e-Verification)
Prescribed Income Tax Authority,
New Delhi

In the Matter of: M/s ABC Pvt Ltd (hereinafter referred to as 'the assessee company')
PAN: AAACA1234H; Address: XYZ Nagar, New Delhi, India

Subject: Submission w.r.t. Notice u/s 143(2) for A.Y.2018-19.

Dear Sir,

This is in reference to the captioned Notice u/s 143(2) of the Act, dated 22.9.2019 for the AY 2018-19, wherein the assessee company has been required to furnish its reply in substantiation and corroboration of its receipts of share capital/share premium money.

In this regard it is respectfully submitted that during the FY 2017-18 corresponding to the AY 2018-19, presently under consideration, the assessee company has received share capital money of Rs. 50 lakhs and share premium money of Rs. 150 lakhs from the investor entity M/s PQR Pvt Ltd towards subscription of its 5,00,000 equity shares of face value of Rs. 10 each at a premium of Rs. 30 each.

Establishment of Identity, Creditworthiness & Genuineness Parameters in relation to the receipt of Share Capital/ Share Premium money by the assessee company:

The complete details of the Share Capital Money and the Share Premium Amount received by the assessee company during the FY 2017-18, presently under consideration, is being tabulated as under:

Name of Investor Entity	No. of Shares	Share Capital Money	Share Premium Amount	Total	PAN of Investor Entity	Address of Investor Entity
PQR Pvt Ltd	5,00,000	50,00,000	1,50,00,000	2,00,00,000	AAACB5678Z	Y-123, DEF Nagar, New Delhi-1100XX

Identity: In order to establish the Identity of the Investor Entity, the undermentioned records and documents are being enclosed as per attachments and are being placed on record:

- (i) Copy of PAN Card of the Investor Entity;
- (ii) Documentary Evidence of Regd. Address of the Investor Entity;
- (iii) Master Data Sheet downloaded from the official site of MCA, showing the active status and reflecting CIN No. and all other particulars of the investor entity.
- (iv) Copy of Memorandum of Association & Articles of Association of Investor Entity.

Genuineness: In order to establish the Genuineness of the Receipts of Share Capital/Share Premium money by the assessee company from the Investor Entity, the undermentioned records and documents are being enclosed as per attachments and are being placed on record:

- (i) Copy of Confirmation from the Investor Entity;
- (ii) Copies of Share Certificates;
- (iii) Certified Copy of Board Resolution of the assessee company, duly authorizing the subscription in the share capital by the investor entity;
- (iv) Copy of Allotment Letter;
- (v) Copy of ROC Form 2, duly evidencing the allotment of shares to the investor entity;
- (vi) Copies of Share Valuation Report u/s 56(2)(viib) read with Rule 11UA(2)(a) of Income Tax Rules;
- (vii) Copy of the Bank Statement of the investor entity duly reflecting the investment in share capital of the assessee company;
- (viii) Copy of Audited Balance Sheet of the investor entity, duly reflecting the investment in the share capital of the appellant company

Creditworthiness: In order to establish the Creditworthiness of the Investor Entity, the undermentioned records and documents are being enclosed as per attachments and are being placed on record:

- (i) Copy of the Bank Statement of the investor entity duly evidencing the availability of sufficient funds at the time of making investments in the share capital of assessee company;
- (ii) Copy of Audited Balance Sheet of the investor entity, duly evidencing the availability of sufficient funds in the form of share capital/reserves and surplus and borrowings, for making investment in the share capital of the assessee company;
- (iii) Copy of ITR of the investor entity.

It is clearly evident from the perusal of the Audited Balance Sheet of the investor company that the said investor company was having substantial share capital and reserves & surplus out of which the investments in the share capital of the assessee company have been made by the investor company. The very fact that the said investor company was having sufficient funds in its bank accounts at the time of making investments in the share capital of the assessee company, clearly establishes the creditworthiness of the said investor company. Further the creditworthiness of the investor company is duly reflected & evidenced by the various financial parameters as per its audited Balance Sheet & the same are tabulated as under:

Financials as per Audited Balance Sheet as on 31.3.2018

<i>Name of Investor Company</i>	<i>Share Capital</i>	<i>Reserves & Surplus</i>	<i>Loans & Advances</i>	<i>Investment</i>	<i>Closing Stock</i>
<i>PQR Pvt. Ltd</i>	<i>10,00,00,000</i>	<i>30,00,00,000</i>	<i>50,00,000</i>	<i>5,00,00,000</i>	<i>2,53,57,000</i>

The aforesaid financial parameters as per the audited balance sheet of the investor company M/s PQR Pvt Ltd, duly establishes its creditworthiness.

Justification for the Issue of Shares at Premium:

The equity shares of the face value of Rs 10 each have been issued by the assessee company at a premium of Rs 30 each. The valuation of the said equity shares has been done in accordance with the provisions of Explanation to Section 56(2)(viib) of the Income Tax Act read with Rule 11UA(2)(a) of the Income Tax Rules and accordingly the Fair Market Value of one equity share of the assessee company has been arrived at Rs 42/- based on the Net Assets Method/ Tangible Networth Method.

A copy of the corresponding Valuation Report of Govt. Approved Valuer duly corroborating & substantiating the said valuation is enclosed as per attachment.

In support of the discharge of the statutory onus of establishing the identity & creditworthiness of the investor company as well as the genuineness of the impugned financial transactions of the receipt of share capital/share premium money by the assessee company, reliance is placed upon the undermentioned numerous binding judicial pronouncements:

- (i) *CIT vs Lovely Exports Pvt Ltd* [2008] 216 CTR 195 (SC);
- (ii) *Earthmetal Electrical Pvt Ltd vs CIT*, Civil Appeal No. 618 of 2010 dt. 30.7.2010 (Supreme Court);
- (iii) *CIT vs Orissa Corporation (P) Ltd* [1986] 25 Taxman 80F (SC);
- (iv) *CIT vs Daulat Ram Rawat Mull* [1973] 87 ITR 349 (SC);
- (v) *CIT vs Stellar Investment Ltd* [2001] 115 Taxman 99 (SC);
- (vi) *CIT III vs Five Vision Promoters Pvt Ltd* ITA Nos. 234/2015; 235/2015 & 236/2015 dt. 27.11.2015, (Delhi High Court);
- (vii) *CIT vs Shiv Dhooti Pearls & Investment Ltd.* [2015] 64 taxmann.com 329 (Delhi);
- (viii) *CIT vs Vrindavan Farms (P) Ltd* ITA No.71/2015 Dt. 12.8.2015(Delhi High Court);
- ix) *CIT vs Value Capital Services Ltd* [2008] 307 ITR 334 (Delhi);
- (x) *CIT vs Gangeshwari Metal Pvt Ltd* [2013] 30 taxmann.com 328 (Delhi);
- (xi) *Mod Creations (P.) Ltd. vs. ITO* [2011] 13 taxmann.com 114 (Delhi);
- (xii) *CIT vs. Dwarkadhish Investment (P) Ltd.* [2010] 194 Taxman 43 (Delhi);
- (xiii) *CIT. vs. Divine Leasing & Finance Ltd.* [2007] 158 Taxman 440 (Delhi);
- (xiv) *CIT vs. Kamdhenu Steel and Alloys Ltd.* [2012] 19 taxmann.com 26 (Delhi);
- (xv) *CIT vs. Oasis Hospitalities P. Ltd.* [2011] 9 taxmann.com 179 (Delhi);
- (xvi) *CIT vs Rockford Metal & Minerals Ltd* [2011] 9 taxmann.com 305 (Delhi);
- (xvii) *CIT vs Gangaur Investment Ltd* [2009] 179 Taxman 1 (Delhi);
- (xviii) *CIT vs SMC Global Share Brokers* [2007] 159 Taxman 306 (Delhi);

In view thereof it is respectfully submitted that the assessee company has duly and fully explained the nature and source of the receipts of share capital/share premium money by furnishing complete details, information, and evidences in the shape of

Confirmation, PAN, income tax particulars, regd. address, ROC records, bank statements, ITR and audited financial statements of the investor entity to discharge the burden of establishment of identity, genuineness and creditworthiness parameters, u/s 68 of the Act, and the Valuation Report by a Government Recognised And Approved Valuer u/s 56(2)(viib) of the Income Tax Act read with Rule 11UA(2)(a) of the Income Tax Rules.

Thanking You.

Yours Sincerely

**For ABC & Company
Chartered Accountants**

**--sd--
(Authorised Counsel of the Assessee Company)**

Step 6: Filing of 'e-Response' to further queries/ scrutiny questionnaire u/s 142(1) read with section 143(2) of the Act:

On consideration of the 'e-Response' of the assessee to the Notice u/s 143(2), if the National e-assessment Centre (NeAC) considers it appropriate, it assigns the case for the purposes of e-assessment to a specific assessment unit in any one Regional e-assessment Centre (ReAC) through an automated allocation system.

Where a case is assigned to the assessment unit, it may make a request to the NeAC for obtaining such further information, documents or evidence from the assessee or any other person, as it may specify.

Where a request for obtaining further information, documents or evidence from the assessee or any other person has been made by the assessment unit, the NeAC issues appropriate notice or requisition to the assessee or any other person for obtaining the information, documents or evidence requisitioned by the assessment unit.



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE PRESCRIBED INCOME TAX AUTHORITY

To, ABC PRIVATE LIMITED XYZ NAGAR NEW DELHI- 11XXXX INDIA	
---	--

PAN: AAACA1234H	AY: 2018-19	Dated: 15/10/2019	Notice No: ACIT/EVR/142(1)/2019-20/1XXXXX
--------------------	----------------	----------------------	--

Notice under Sub Section (1) of Section 142 of the Income Tax Act, 1961

Sir/ Madam/ M/s,

In connection with the assessment for the assessment year 2018-19 you are required to:

- Furnish or cause to be furnished on or before 31/10/2019 at 12:15 PM the accounts and documents specified overleaf.
- Furnish and verified in the prescribed manner under Rule 14 of I.T. Rules 1962 the information called for as per annexure and on the points or matters specified therein on or before 31/10/2019 at 12:15 PM.
- The above mentioned evidence/information is to be furnished online electronically in 'E-Proceeding' facility through your account in 'e-filing' website of Income Tax Department.
- Para(s) (a) to (c) are applicable if you have an account in e-filing website of Income Tax Department. Till such an account is created by you, assessment proceedings shall be carried out either through your e-mail account or manually (if e-mail is not available).
- In cases where order has to be passed under section 153A/153C of the Income Tax Act, 1961 read with section 143(3), assessment proceedings would be conducted manually.

Yours faithfully,

Assistant Commissioner of Income Tax (e-verification)
Prescribed Income Tax Authority under Income Tax Act, 1961


ANNEXURE

In connection with the assessment proceedings u/s 143(3) of the Act for the AY 2018-19, you are required to:

- Furnish the complete details of parties/entities from which share capital/share premium money has been received by you during the FY 2017-18 in order to establish the identity, creditworthiness and genuineness of such receipts.

The assessee is required to file his 'e-responses' to such notices/requisitions u/s 142(1) and attach the relevant supporting records and documents as attachments exactly in

the same manner as has already been discussed in 'Step 4' and 'Step 5' above, in the case of filing his e-response to Notice u/s 143(2) in the e-Proceeding tab.


e-Filing *Anywhere Anytime*
Income Tax Department, Government of India

[Downloads](#) [Feedback](#) [Accessibility Options](#) [Contact Us](#) [Help](#)
Welcome | **ABC PRIVATE LIMITED** (Corporate) [Logout](#)
Last Login: 05/10/2019 18:35:44
Idle Session Timer **1 4 : 1**

[Dashboard](#) [My Account](#) [e-File](#) [e-Proceeding](#) [e-Nivaran](#) [Compliance](#) [Worklist](#) [Profile Settings](#)

e-Proceedings

PAN - AAACA1234H
Assessment Year - 2018-19
Proceeding Name - Assessment Proceeding u/s 143(3)

Notice/Communication reference ID	Notice u/s	Description	Issued On	Document ID	Served On	Response Due date	Response	Response viewed by AO on
100000003100933	143(2)	[ITBA]Notice under section 143(2) of the Income Tax Act, 1961	22.09.2019	ITBA/AST/S/143(2)/2018-19/1011311328(1)	-	07.10.2019	Submit View	-
100000030373111	142(1)	[ITBA]Notice u/s 142(1)of Income Tax Act 1961.	08.10.2019	ITBA/AST/F/142(1)/2019-20/1017215776(1)	-	15.10.2019	Submit View	-
100000031227460	142(1)	[ITBA]Notice u/s 142(1)of Income Tax Act 1961.	16.10.2019	ITBA/AST/F/142(1)/2019-20/1017664414(1)	-	25.10.2019	Submit	-

Back

Note :
1. Please click on the **Reference ID** hyperlink to view the Notice Details.
2. In order to submit the response click on the **Submit** hyperlink under Response Column.
3. To View the details of submitted Response, please click on **View** hyperlink.
4. u/s - under section

Step 7: Passing of the Draft Assessment Order by the Assessment Unit in ReAC:

The assessment unit, after taking into account all the relevant material available on the record, make in writing, a draft assessment order either accepting the returned income of the assessee or modifying the returned income of the assessee, as the case may be, and send a copy of such order to the NeAC.

Step 8: Examination of Draft Assessment Order by NeAC & Issue of a Show Cause Notice by NeAC to Assessee:

The NeAC examines the draft assessment order in accordance with the risk management strategy specified by the Board (CBDT), including by way of an automated examination tool, whereupon it either:

- finalises the assessment as per the draft assessment order and serves a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, along with the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment; or
- provides an opportunity to the assessee, in case a modification is proposed, by serving a notice calling upon him to show cause as to why the assessment should not be completed as per the draft assessment order.**

ANNEXURE

In connection with the assessment proceedings u/s 143(3) of the Act for the AY 2018-19, you are required to:

- (i) Show cause as to why the receipts of share capital/share premium money of Rs. 2,00,00,000/- from the entity M/s PQR Pvt Ltd may not be treated as unexplained cash credits u/s 68 of the Income Tax Act, as the perusal of the bank statement of the said entity shows that prior to subscribing to your share capital, the said entity has received funds from two other entities namely M/s STU Pvt Ltd and M/s VWX Pvt Ltd which are bogus entities of GHI Group as per the records of the Income-tax department.

Step 9: Filing of 'e-Response' by the assessee to the Show Cause Notice:

The assessee is required to file his 'e-response' to such Show Cause Notice and upload the relevant supporting records and documents as attachments exactly in the same manner as in the case of filing his e-response to Notice u/s 143(2) in the e-Proceeding tab, as discussed above.

The specimen of an ideal 'e-response' to the Show Cause Notice u/s 142(1)/143(2) of the Act, on the issue of receipt of share capital/share premium is reproduced below for the ready reference of the worthy readers.

ABC & COMPANY CHARTERED ACCOUNTANTS

Tax Chambers, New Delhi - 1100XX, Tel.: 011-12345678, Fax: 011-87654321
E-mail: abc@taxchambers.com

September 10, 2020

The ACIT (e-Verification)
Prescribed Income Tax Authority,
New Delhi

In the Matter of: M/s ABC Pvt Ltd (hereinafter referred to as 'the assessee company')
PAN: AAACA1234H; Address: XYZ Nagar, New Delhi, India

Subject: Submission w.r.t. Show Cause Notice u/s 142(1) for A.Y.2018-19.

Dear Sir,

This is in reference to the captioned show cause notice, wherein the assessee company has been required to show cause as to why the receipts of share capital/ share premium money from the investor company M/s PQR Pvt Ltd should not be considered as unexplained cash credits u/s 68 of the Income Tax Act.

In this regards, it is respectfully submitted that in the course of the ongoing regular assessment proceedings for the AY 2018-19, the assessee company has duly discharged its statutory onus u/s 68 of the Income Tax Act of establishing the Identity and Creditworthiness of the Investor Company M/s PQR Pvt Ltd & the Genuineness of the financial transactions of receipt of share capital/share premium money of Rs. 2 crores, from the said investor company.

Identity: The Identity of the Investor Entity has been duly and fully established by furnishing details of:

- (v) PAN No.,
- (vi) Regd. Address,
- (vii) CIN No.,
- (viii) Income Tax Particulars;
- (ix) Copy of ITR;
- (x) Master Data Sheet downloaded from the official site of MCA, showing the active status and reflecting full particulars of the investor entity.

Genuineness: The Genuineness of the share capital/share premium money receipts, from the investor entity, has been duly and fully established by furnishing of:

- (i) Copy of Confirmation;
- (ii) Copies of Share Certificates;
- (iii) Certified Copy of Board Resolution of the assessee company, duly authorizing the subscription in the share capital by the investor entity;
- (iv) Copy of Allotment Letter;
- (v) Copy of ROC Form 2, duly evidencing the allotment of shares to the investor entity;
- (vi) Copies of Share Valuation Report u/s 56(2)(viib) read with Rule 11UA(2)(a) of Income Tax Rules;
- (vii) Copy of the Bank Statement of the investor entity duly reflecting the investment in share capital of the assessee company;
- (viii) Copy of Audited Balance Sheet of the investor entity, duly reflecting the investment in the share capital of the assessee company.

Creditworthiness: The Creditworthiness of the Investor Entity has been duly and fully established by furnishing:

- (i) Copy of the Bank Statement of the investor entity duly evidencing the availability of sufficient funds at the time of making investments in the share capital of assessee company;
- (ii) Copy of Audited Balance Sheet of the investor entity, duly evidencing the availability of sufficient funds in the form of share capital/reserves and surplus and borrowings, for making investment in the share capital of the assessee company;
- (iii) Copy of ITR of the investor entity.

In your captioned show cause notice, it has been alleged that the investor company has received credits in its bank account from two entities namely M/s STU Pvt Ltd and VWX Pvt Ltd prior to the issue of cheques towards share capital money to the assessee company and these companies have been alleged to be bogus companies and as such the genuineness and creditworthiness of the investor company has been alleged to be doubtful.

In this regards, it is respectfully submitted that in the absence of any corroborating material or evidence placed on record, discrediting the genuineness and creditworthiness of the investor company as duly evidenced by the entire gamut of statutory records being placed on record by the assessee company, merely on the basis of vague and factually misconceived assertions of considering certain sub-investors of the investor company as bogus entities is not at all in conformity with the well settled legal position that no adverse inference can be drawn against the assessee even if the investors/sub investors are considered as bogus entities by the revenue authorities.

Discharge of onus by the Investor Entity, as per provisions of first proviso to section 68 of the Income Tax Act, 1961:

The Ld. AO had sent notice u/s 133(6) of the Act, for independent confirmation, to the investor entity. The said notice u/s 133(6) of the Act, was duly responded to independently by the said investor entity, vide its reply letter dated 10.1.2020 (copy enclosed as per attachment).

In its reply letter, the investor entity had duly confirmed the fact of its subscription in the share capital of the assessee company, independently and had also fully explained the nature and source of its investment in the share capital of the assessee company and had also furnished its bank statement duly reflecting the source of its investment and copies of audited financial ledgers and ITR, before the Ld. AO.

In view thereof it is respectfully submitted that the assessee company had duly and fully explained the nature and source of the receipts of share capital money by furnishing complete details, information, and evidences in the shape of Confirmation, PAN, income tax particulars, regd. address, ROC records, bank statements, ITR and

audited financial statements of the investor entities to discharge the burden of establishment of identity, genuineness and creditworthiness parameters, u/s 68 of the Act. The investor entity had also, independently, duly and fully explained the nature and source of its investment in the share capital of the assessee company in its Reply to notice u/s 133(6) of the Act, before the Ld. AO.

Submission w.r.t. the alleged “bogus status” of the investor company:

It is respectfully submitted that in view of the factual proposition that the investor company is an independent corporate entity duly registered under the Companies Act & is having “Active” status as per the Ministry of Corporate Affairs, is having valid PAN issued by Income Tax Dept. & is being duly assessed to income-tax, is having authentic bank a/cs & is duly preparing & laying before the AGM & filing before the ROC, the audited annual final accounts, the Ld. AO's bald assertion of considering the investor company as Bogus Company is devoid of any factual or legal merit.

It is respectfully submitted that when the investor company has valid legal existence & acceptance as per Companies Act, Income Tax Act & Banking Regulation Act etc., & for all the statutory compliances & purposes viz. Registration under Companies Act, Issuing of PAN by Income Tax Department, Opening of Bank A/c, Annual Filing of Audited Balance Sheets before the Registrar of Companies etc., it is being duly considered as legal entity, then there is no legal & factual merit or substance to assume the investor company as a bogus entity, in the context of the receipts of share capital money of the assessee company, merely on the basis of conjectures, surmises & whimsical inferences.

An allegation by itself which is based on assumption will not pass muster in law. The revenue would be required to bridge the gap between the suspicions and proof in order to bring home this allegation. {MOD Creations (P) Ltd. vs. ITO [2011] 13 taxmann.com 114(Delhi)}

The investor company is an identifiable corporate entity, who is duly registered with Registrar of Companies under the Companies Act' 1956, maintaining authentic bank accounts with respective bankers and has valid PAN Nos. and is also filing income tax returns with respective Assessing Officers. Further, the investor company has duly confirmed the fact of subscription in the share capital of the assessee company and, all respective authorities i.e. AO, Bankers and ROC and even the Income Tax Department (in issuing PAN & doing assessments) accept the valid existence of the investor company for all legal & statutory purposes, then it is incorrect in law or fact

to suggest that the receipt of the share capital money by the assessee company from the investor company are unexplained credits in the hands of assessee company as creditworthiness is not proved or transaction is not genuine, particularly when the impugned transactions are duly admitted & accepted by the investor company in its confirmations, in its audited balance sheets filed with Registrar of Companies and also its creditworthiness is also duly explained from its audited financial statements

already placed on record. The Ld. Revenue Authorities have not objected to the authenticity or the veracity of these entire gamut of evidences placed on record, rather have very conveniently chosen to ignore the same & make wild & whimsical allegations of the bogus status of a few of the sub-investor companies of the said investor company. This casual approach on the part of the Ld. Revenue Authorities is not at all in conformity with the well settled legal position that once the assessee has discharged its onus of establishing the identity & creditworthiness of the investor company & the genuineness of the transactions, then no addition can be made in the hands of the assessee u/s 68 of the Income Tax Act.

Therefore, if at all there were some further doubts to be clarified, then it was incumbent upon the Revenue Authorities to enquire these doubts independently from the respective investor company/ sub investor companies & make independent assessments in their respective hands & no addition u/s 68 is warranted in the hands of the assessee company in respect of the receipts of the share capital money.

Reliance in this regard is placed upon the landmark judgment of the Hon'ble Supreme Court, in the case of **CIT vs Lovely Exports Pvt Ltd** (2008) 299 ITR 268 (SC), wherein the Hon'ble Apex Court have very clearly & categorically held that,

"2. Can the amount of share money be regarded as undisclosed income under s. 68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share capital money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment."

It is pertinent to mention here that the afore-stated ratio has become the Law of Land & has been upheld time & again by the numerous subsequent judicial pronouncements of the Hon'ble Supreme Court as well as the jurisdictional Hon'ble Delhi High Court.

Similar Reliance is placed upon the Judgement of the Hon'ble Supreme Court in the case of **M/s Earthmetal Electrical Pvt Ltd** Civil Appeal No.618 of 2010 Dt. 30.7.2010 (Supreme Court). The facts of the case are as under:

The AO having found certain share capital money & unsecured loan in the books of accounts of the assessee company directed the assessee to explain the same. In response, the assessee submitted confirmations of share applicants. The AO having noted that the said confirmations didn't contain the necessary details, issued notice u/s 133(6) to all the share applicants. These were not responded to by the share applicants. The AO also procured information u/s 131 from the bankers & compared the transactions but could not co-relate them. He then issued notice to assessee but the assessee never appeared before the AO. The AO then treated the share capital money as unexplained & made the addition. The ITAT Mumbai & Bombay High Court confirmed the order of the AO.

The Hon'ble Supreme Court allowed the SLP of the assessee & relying upon its earlier judgement in the case of CIT vs Lovely Exports (P) Ltd (2008) 216 CTR 195 (2008) held that,

"If the share capital money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the revenue authorities are free to reopen their individual assessments in accordance with law, but it can't be regarded as unexplained income of the assessee company."

Further, it is respectfully submitted that the afore-stated narrow interpretation of the expression "creditworthiness" in the context of section 68 of the Income tax Act by the Ld. AO is not at all in conformity with the well settled legal position as emerged from the numerous binding judicial pronouncements mentioned as under:

In a very recent judgement of the jurisdictional Hon'ble Delhi High Court in the case of CIT vs. Shiv Dhooti Pearls & Investment [2015] 64 taxmann.com 329 (Delhi), the assessee had received an unsecured loan from M/S TIL (the lender), which in turn had taken an unsecured loan from M/S TCL (sub lender) to advance this loan to the assessee.

In the said case, the Hon'ble Delhi High Court, held as follows:

"In view of the legal position explained in the above decisions, the Court holds that as far as the present case is concerned, the Assessee has indeed discharged its onus of proving the creditworthiness and genuineness of the lender (TIL). There was no requirement in law for the Assessee to prove the genuineness and credit worthiness of the sub- creditor, which is in this case was TCL."

The Hon'ble Delhi High Court has relied on its earlier judgment in the case of Mod. Creations Pvt. Ltd. v. Income Tax Officer in arriving at the aforesaid conclusion.

The relevant extract is reproduced below for ready reference:

*Para 13.....In the subsequent decision of this Court in **Mod. Creations Pvt. Ltd. v. Income Tax Officer (2013) 354 ITR282 (Del)**, the position was clarified by the Court and it was held: "It will have to be kept in mind that Section 68 of the I.T. Act only sets up a presumption against the Assessee whenever unexplained credits are found in the books of accounts of the Assessee. It cannot but be gainsaid that the presumption is rebuttable. In refuting the presumption raised, the initial burden is on the Assessee. This burden, which is placed on the Assessee, shifts as soon as the Assessee establishes the authenticity of transactions as executed between the Assessee and its creditors. It is no part of the Assessee's burden to prove either the genuineness of the transactions executed between the creditors and the sub-creditors nor is it the burden of the Assessee to prove the credit worthiness of the sub-creditors."*

14. In Mod. Creations Pvt. Ltd. (supra) this Court negated the case of the Revenue that the onus was on the Assessee to prove the source of the sub-creditor. It was observed as under:

"14. With this material on record in our view as far as the Assessee was concerned, it had discharged initial onus placed on it. In the event the revenue still had a doubt with regard to the genuineness of the transactions in issue, or as regards the credit worthiness of the creditors, it would have had to discharge the onus which had shifted on to it. A bald assertion by the A.O. that the credits were a circular route adopted by the Assessee to plough back its own undisclosed income into its accounts, can be of no avail. The revenue was required to prove this allegation. An allegation by itself which is based on assumption will not pass muster in law. The revenue would be required to bridge the gap between the suspicions and proof in order to bring home this allegation. The ITAT, in our view, without adverting to the aforementioned principle laid stress on the fact that despite opportunities, the Assessee and/or the creditors had not proved the genuineness of the transaction. Based on this the ITAT construed the intentions of the Assessee as being mala fide. In our view the ITAT ought to have analyzed the material rather than be burdened by the fact that some of the creditors had chosen not to make a personal appearance before the A.O. If the A.O. had any doubt about the material placed on record, which was largely bank statements of the creditors and their income tax returns, it could gather the necessary information from the sources to which the said information was attributable to. No such exercise had been conducted by the A.O. In any event what both the A.O. and the ITAT lost track of was that it was dealing with the assessment of the company, i.e., the recipient of the loan and not that of its directors and shareholders or that of the sub-creditors. If it had any doubts with regard to their credit worthiness, the revenue could always bring it to tax in the hands of the creditors and/or sub-creditors. [See CIT v. Divine Leasing & Finance Ltd. (2008) 299 ITR 268 (Delhi) and CIT v. Lovely Exports (P) Ltd. (2008) 216 CTR 195 (SC)]."

Similarly, the Hon'ble Delhi High Court in its recent judgment in the case of **CIT v Vrindavan Farms (P) Ltd.** in ITA No. 71/2015 dated 12.8.2015 has clearly held as follows:

"3. The ITAT has in the impugned order noticed that in the present case the Revenue has not doubted the identity of the share applicants. The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their Income Tax Returns. The entire details of the share applicants were made available to the Ld.AO by the Assessee. This included their PAN numbers, confirmations, their bank statements, their balance sheets and profit and loss accounts and the certificates of incorporation etc. It was observed by the ITAT that the Ld. AO had not undertaken any investigation of the veracity of the above documents submitted to him. It has been rightly commented by the ITAT that without doubting the documents, the Ld. AO completed the assessment only on the presumption that low return of income was sufficient to doubt the credit worthiness of the shareholders.

4. The Court is of the view that the Assessee by producing sufficient documentation discharged its initial onus of showing the genuineness and creditworthiness of the share applicants. It was incumbent to the Ld. AO to have undertaken some inquiry and investigation before coming to a conclusion on the issue of creditworthiness. In para 39 of the decision in Nova Promoters (supra), the Court has taken note of a situation where the complete particulars of the share applicants are furnished to the Ld.AO and the Ld.AO fails to conduct an inquiry. The Court has observed that in that event no addition can be made in the hands of the Assessee under Section 68 of the Act and it will be open to the Revenue to move against the share applicants in accordance with law."

Similarly, the Hon'ble Delhi High Court in its judgment in the case of 307 ITR 334 (Del) CIT vs. Value Capital Services Ltd, has clearly held as follows:

"Learned counsel for the Revenue submits that the creditworthiness of the applicants can nevertheless be examined by the Assessing Officer. It is quite obvious that it is very difficult for the Assessee to show the creditworthiness of strangers. If the Revenue has any doubt with regard to their ability to make the investment, their returns may be re-opened by the department.

In any case, what is clinching is the additional burden on the Revenue. It must show that even if the applicant does not have the means to make the investment, the investment made by the applicant actually emanated from the coffers of the Assessee so as to enable it to be treated as the undisclosed income of the Assessee. This has not been shown insofar as the present case is concerned and that has been noted by the Tribunal also."

In view of the aforesaid factual and legal matrix, the assessee company has duly and fully discharged its statutory onus u/s 68 of the Income Tax Act of establishing the identity, genuineness & creditworthiness parameters. It is also a matter of fact that the notice u/s 133(6), sent by the Ld. AO, to the investor company, for independent confirmation, has also been duly responded to by the investor company & the complete details along with the confirmation of share subscription, audited balance sheet & ITR, were duly placed on record before the Ld. AO, by the investor company. Therefore, there is no lawful reason and justification to treat the receipts of share capital/ share premium money in the hands of the assessee company from the investor company M/s PQR Pvt Ltd.

Thanking You.

Yours Sincerely

--sd--

**For ABC & Company
Chartered Accountants**

(Authorised Counsel of the Assessee Company)

Step 10: Passing of the Final Assessment Order

The NeAC forwards the 'e-Responses' of the assessee to the Show Cause Notice to the Regional Assessment Unit which in turn after taking due cognizance of all the e-responses of the assessee passes the revised assessment order. **If the assessee so requires, the NeAC may provide the assessee with the opportunity of personal hearing via video telephony.** The regional assessment unit after taking cognizance of the inputs from such personal hearing as provided to it by NeAC, again passes the final assessment order, which is uploaded by NeAC in the registered 'e-Filing' account

of the assessee, within the time barring limitation period of completion of assessments u/s 143(3) of the Act, which can be seen and downloaded by the assessee from the main window under the tab '*e-proceedings*'.

The NeAC also transfers the final assessment order and all the assessment records to the file of jurisdictional AO for imposition of penalty if any and recovery of outstanding income tax demand, if any.

A specimen of the final assessment order passed by NeAC u/s 143(3) of the Act is reproduced as under for ready reference:



**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE PRESCRIBED INCOME TAX AUTHORITY
ASSISTANT COMMISSIONER OF INCOME TAX (e-VERIFICATION)**

To, ABC PRIVATE LIMITED XYZ NAGAR, NEW DELHI-11XXXX INDIA			
PAN: AAACA1234H	AY: 2018-19	Order No: ITBA/AST/S/143(3)/2019-20/1014326470(1)	Dated: 25.09.2020
Name of the assessee		ABC PRIVATE LIMITED	
Address of the assessee		XYZ NAGAR, NEW DELHI-11XXXX, INDIA	
Resident/ Resident but not Ordinarily		Resident	
Resident/ Non-Resident			
Section/ Sub-Section under which assessment is made		143(3)	
Date of Order		25.09.2020	

ASSESSMENT ORDER