

# ASSESSMENT RE-ASSESSMENT & PENNY STOCK ISSUES



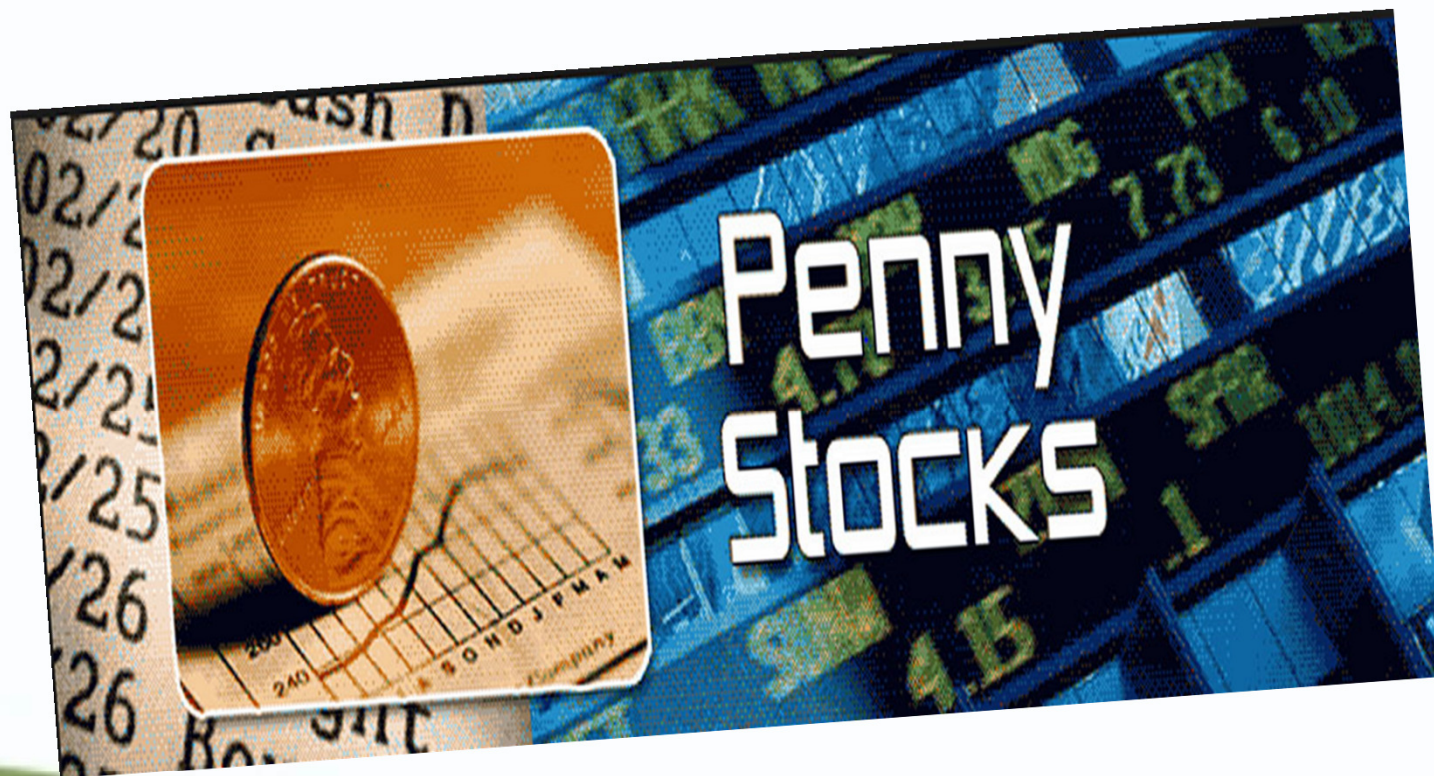
**LUNAWAT & CO.**

**Chartered Accountants**

**26<sup>th</sup> November 2016, East Delhi**

**CA. PRAMOD JAIN**

**FCA, FCS, FCMA, LL.B, MIMA, DISA**



# Penny Stocks

# **WHAT IS PENNY STOCK**

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- ✘ **As per wikipedia - Penny stocks are common shares of small public cos. that trade at low prices per share.**
  - + **In USA, U.S. Securities & Exchange Comm. (SEC) defines it as security that trades below \$5-per-share, is not listed on national exchange & fails to meet other specific criteria.**
  - + **In U.K stocks priced under £1.**
  - + **In India – No law -generally market cap. < Rs. 100 cr. & share traded <Rs. 10/- per share**

# SEVERAL WEBSITES

✘ **Several websites recommend investing in penny stocks world wide..but with a caution**

+ [www.pennystocks.com](http://www.pennystocks.com)

+ [www.allpennystocks.com](http://www.allpennystocks.com)

+ [www.pennystockobserver.com](http://www.pennystockobserver.com)

+ [www.pennystocklist.com](http://www.pennystocklist.com)

+ [www.smartmoneygoal.in](http://www.smartmoneygoal.in)

+ [www.moneyexcel.com](http://www.moneyexcel.com)

+ <http://nseguidе.com/category/penny-stocks/>

+ <http://penny.tipz.in/>

+ **How to become a Penny Stock Millionaire -**

<https://www.youtube.com/watch?v=3NZtalFqFYw>

# **REGULATOR**

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- ✘ **SEBI is the Indian regulator for listed companies in India**
  - ✘ **It had barred 59 entities from trading, buying, selling or dealing in the securities markets, either directly or indirectly in August 2015.**
  - ✘ **2-3 Times earlier also barred.**
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## **OLD DECISIONS**

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- **Mukesh R. Marolia vs. ACIT [2006] 6 SOT 247 (Mum Trib)**
  - In the present case, howsoever unbelievable it might be, every transaction of the assessee has been accounted, documented and supported.
  - Even the evidences collected from the concerned parties have been ultimately turned in favour of the assessee.
  - Therefore, it is very difficult to brush aside the contentions of the assessee that he had purchased shares and he had sold shares and ultimately he had purchased a flat utilising the sale proceeds of those shares.

# **OLD DECISIONS**

- ✘ **Purchase of 8,500 shares of Nageshwar Investment Ltd. at Calcutta Stock Exchange Cost Rs. 17170/-**
- ✘ **Sales - Rs. 7,32,360/-**
- ✘ **Payment & Receipt by account payee cheques**
- ✘ **A.O. adds Rs. 7,32,360/- u/s 68.**
- ✘ **Held - A.O. has failed to bring on record any evidence to establish that evidence filed by assessee as well as share broker were fabricated or false. ...It is not the case of the revenue that there is no such broker or the distinctive nos of the shares of M/s Nageshwar Investments Ltd. do not exist or the transactions of purchase and sale of such shares recorded through bank and demat form are fictitious. The A.O. has simply acted on the information gathered from the Calcutta Stock Exchange.**

*ITO vs. Raj Kumar Agarwal, ITA No. 1330/K/07, dated 10.08.2007*

## **OLD DECISIONS**

- × CIT vs. Carbo Industrial Holdings Ltd. (2000) 244 ITR 422 (Cal)**
  - + Payment by a/c cheque has not been disputed.**
  - + Payment on purchase & sale & payment received by a/c payee cheque was on two different dates.**
  - + If share broker, even after issue of summons, does not appear for that reason, claim of assessee should not be denied, specially in cases when existence of broker is not in dispute nor payment is in dispute.**
  - + Merely because some broker failed to appear, assessee should not be punished for default of broker & we are in full agreement with Tribunal that on mere suspicion claim of assessee should not be denied.**



# **OLD DECISIONS** *Lunawat & Co.*

- ✘ Transaction through broker- but suspended by the SEBI.
- ✘ Payment for purchase after 6 mnths- Demat after 16 mnths
- ✘ Held - Fact that Broker through whom shares are sold has been barred from entering transactions w.e.f. Sept. 2005 whereas these transactions entered by assessee are entered much prior to suspension of broker i.e. on 24.12.04. Therefore, there is no reason to disbelieve this transaction.. Contention of revenue that assessee had made payments after lapse of 16 months is not acceptable, since, in this case, assessee has entered into several transactions both purchase/sales which is apparent from ledger of M/s S.B. Buthra & Co.. Endorsement of company made on 30.08.03 on share certificates & confirmation by broker clearly establishes that assessee has purchased shares on 20.6.03. Similarly sales are also reflected in books of assessee which are supported by contract notes & bank statement.

*Rahul Vashist vs. ITO, ITA NO. 140/K/09 dated 10.08.2007*

# OLD DECISIONS *Lunawat & Co.*

- ✘ Off market purchase. Shares credited in the Demat A/c
  - ✘ Variation in the trade time. Quantity of shares traded also does not tally.
  - ✘ Held
    - † Shares available in Demat Account
    - † Contract Notes issued by a registered broker
    - † Sale consideration by account payee cheque
    - † Off market transactions do not reflect in the Stock Exchange system
    - † Variations noted by the A.O. is only a pointer to further investigate the transactions claimed by the assessee..
- Dy CIT vs. Jagdish Prasad Goel, ITA No. 541/K/10, dated 13.04.2011*

# **DECISION**

- ✘ When, assessee purchased shares from broker, they were purchased by him from M/s “S” & when assessee sold shares to broker, shares were purchased by same M/s “S”.
- ✘ ET reported in March 2006 about fraudulent transactions resulting into false capital gains.
- ✘ Transactions not done in the online system.
- ✘ Held:
  - + Shares were quoted in CSE
  - + Shares were in the Demat A/c. Shares were held in the assessee’s name for over 12 months.
  - + Shares were purchased in the off market through broker.
  - + Assessee is not supposed to know the working of the share broker in the stock exchange.

*Lalit Jagmohan Jalan (HUF ) vs. ACIT, ITA No. 693/Kol/2009; dt. 10.02.2016*

# DECISION

- ✘ Assessee purchased shares of Globe Commercial Limited through 'M' – share broker.
- ✘ Shares were sold through another broker 'S'.
- ✘ Assessee booked Long Term Capital Gains.
- ✘ Information received by A.O. from DDIT (Inv.) - Assessee had taken a bogus entry of LTCGs by paying cash + premium.
- ✘ Held:
  - + Reasons recorded were vague and not proper.
  - + A.O. has to record his satisfaction about the correctness or otherwise of the information.
  - + The A.O. cannot accept the truth of the vague information in a mechanical manner.

# DECISION

## ✘ **CIT vs SFIL Stock Broking Ltd -(2010) 325 ITR 285 (Del)**

### ✘ **Reasons recorded**

+ “Information received from Dy. Director of IT (Inv.), ....that one of my assesseees M/s SFIL Stock Broking Ltd., has made bogus claim of long-term capital gains shown as earned on account of sale/purchase of shares ...He has directed the A.O. to get notices u/s 148. Subsequently, I have been directed by the Addl. CIT R8/2002-03/572, dt. 26th Aug., 2003 to initiate proceedings under S. 148 in respect of cases pertaining to this ward. Thus, I have sufficient information in my possession to issue notice under S. 148 in the case of M/s SFIL Stock Broking Ltd. on the basis of the reasons recorded as above.”

### ✘ **Findings of the HC:**

- + A.O. has merely referred to the information and two directions as “reason to belief”
- + These cannot be the reason for proceeding u/s 147.
- + From the “reasons” it is not discernible that the A.O. had applied his mind to the information and independently arrived at a belief.
- + Tribunal has arrived at the correct conclusion of facts.

# RECENT DECISIONS

✘ **CIT vs. Mukesh Ratilal Marolia (Bombay HC) - Dt. – 7/9/2011**  
**(2012) 80 CCH 0407 MumHC**

+ Fact that a small amount invested in "penny" stocks gave rise to huge capital gains in a short period does not mean that the transaction is "bogus" if the documentation and evidences cannot be faulted.

✘ **DCIT vs. Sunita Khemka (ITAT Kol) - [2016-ITRV-ITAT-KOL-057]**

+ AO cannot treat a transaction as bogus only on the basis of suspicion or surmise. He has to bring material on record to support his finding that there has been collusion/connivance between the broker and the assessee for the introduction of its unaccounted money. A transaction of purchase and sale of shares, supported by Contract Notes and demat statements and Account Payee Cheques cannot be treated as bogus.

✘ **ITO vs. Indravadan Jain (HUF) -Dt. 27/5/2016 (2016) 47 CCH**  
**0303 MumTrib**

+ Long-term capital gains arising from transfer of penny stocks cannot be treated as bogus merely because SEBI has initiating an inquiry with regard to the Company & the broker if the shares are purchased from the exchange, payment is by cheque and delivery of shares is taken & given.

# RECENT DECISIONS

## ✘ **Farrah Marker vs. ITO – Dt. 27/04/16 (2016) 46 CCH 0535 MumTrib**

- ✚ **When the addition under section 68 of the Act is made merely on presumptions, suspicions and surmises in respect of penny stocks; disregarding the direct evidences placed on record furnished by the assessee than the addition made is liable to be deleted.**
- ✚ **Long-term capital gains on sale of "penny" stocks cannot be treated as bogus & unexplained cash credit if documentation is in order & there is no allegation of manipulation by SEBI or BSE. Denial of right of cross-examination is a fatal flaw which renders the assessment order a nullity.**

# Assessment

Regular [143(3)]

Best Judgment  
[144]

Reassessment  
[147]

Block [158BC]



# RE-ASSESSMENT

## ◆ Provisions – S. 147 to 151

- ◆ A.O before exercise of jurisdiction must have reason to believe that income has escaped assessment, even if there is full and true disclosure of material facts by the assessee
- ◆ Once an assessment has been reopened, any other income that has escaped reassessment and comes to the notice subsequently also be included.
- ◆ Can be reopened after expiry of 4 years from end of the relevant AY only if the income has escaped assessment due to the failure on the part of the assessee to file a return of income or to disclose fully and truly all material facts necessary for assessment.

# RE-ASSESSMENT

- ❖ **Condition for initiation u/s 147 summarised by Gujarat HC in *Sheth Bros v. JCIT 251 ITR 270*:**
  - ◆ **There must be material for the belief**
  - ◆ **Circumstances must exist and cannot be deemed to exist for arriving at an opinion**
  - ◆ **Reason to believe must be honest and not based on suspicion, gossip, rumour or conjecture**
  - ◆ **Reasons referred to must disclose the process of reasoning by which he holds “reasons to believe” and change of opinion does not confer jurisdiction to reassess**
  - ◆ **There must be nexus between material and belief**
  - ◆ **The reasons referred to must show application of mind by the assessing officer**

# **RE-ASSESSMENT**

## ❖ **Communication of reasons recorded :**

- ◆ **AO is bound to furnish reasons within a reasonable time, after return has been filed in pursuance of s. 148 notice**
- ◆ **On receipt of notice, assessee is entitled to file objections to the issuance of notice**
- ◆ **AO is bound to dispose the same by passing a speaking order before proceeding with the assessment**

# **CHANGE OF OPINION**

❖ **No reopening on a change of opinion - Even under the amended provisions the AO is not empowered to reopen assessment on a mere change of opinion:**

- ♦ **CIT v Kelvinator of India Ltd. : 256 ITR 1 [Delhi FB]**
- ♦ **Jindal Photo Films Ltd. v. DCIT : 234 ITR 170 (Delhi)**
- ♦ **CIT vs Hardware Trading Co. : 116 Taxman 274 (Karn.)**
- ♦ **Foramer vs. CIT : 247 ITR 436 (All.)**
- ♦ **Berger Paints India Ltd. vs. JCIT : 245 ITR 645**
- ♦ **Sarabhai M Lakhani vs. ITO : 145 CTR 110 (Guj.)**
- ♦ **Ranchi Handloom Emporium vs. CIT : 235 ITR 604**
- ♦ **Garden Silk Mills Ltd. v. DCIT : 237 ITR 668 (Guj.)**
- ♦ **Khaira Dist. Coop. Milk Producers Union Ltd. v. CIT: 220 ITR 194 (Guj.)**
- ♦ **VXL India Ltd. v. ACIT : 215 ITR 295 (Guj.)**
- ♦ **Nagin Bhai G. Patel v. ITO : 134 CTR 210 (Guj.)**

# **RE-ASSESSMENT**

- ❖ **Time limit for issuance of notice [S. 149(1)]**
  - ◆ Where income escaping assessment is Rs.1 lac or more - 6 years from the end of the relevant assessment year
  - ◆ Where income escaping assessment is less than Rs.1 lac - 4 years from the end of the relevant assessment year
  - ◆ More than 4 years > 16 Years - Income / asset located outside India
  
- ❖ **Whether service of notice necessary**
  - ◆ Service of notice not a condition precedent for conferment of jurisdiction on assessing officer to deal with the matter but a condition precedent to making the order of assessment

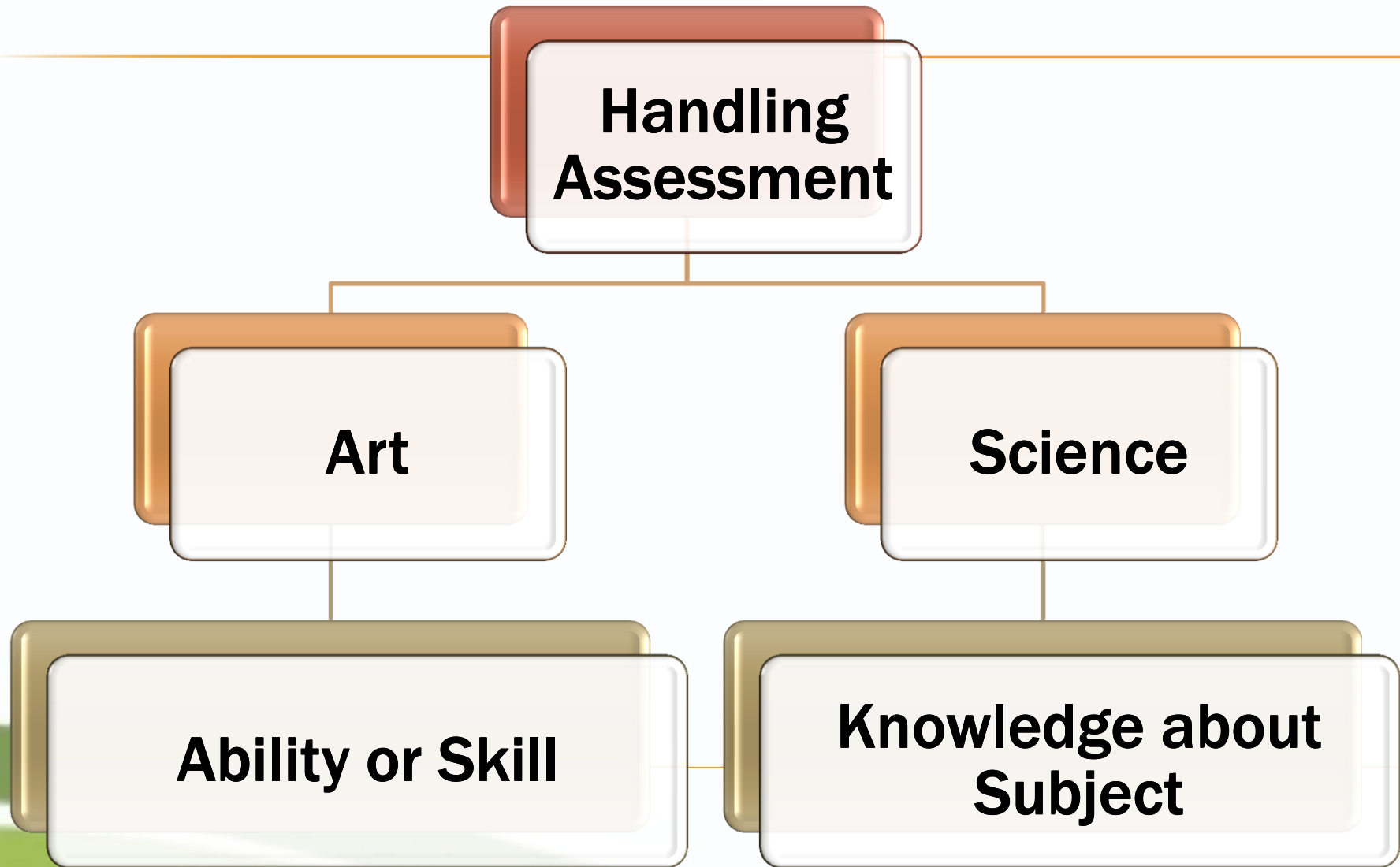
***[R.N. Upadhyaya v. Shanabhai P. Patel : 166 ITR 163(SC)]***

# RE-ASSESSMENT - REASONS

- ✘ There should be direct nexus between the material coming to the notice of the A.O. and the formation of belief that there is escapement of income - *Lakhmani Mewal Das 103 ITR 437 (SC)*.
- ✘ If there is no material or there is no rational and intelligent connection between the reasons and belief, so that, on such reasons recorded, no one properly instructed on the facts and law could reasonably entertain the belief that income has escaped assessment, the conclusion would be that the A.O. had no reasons to belief - *Ganga Saran & Sons (P) Ltd. vs. ITO 130 ITR 1 (SC)*
- ✘ The words of the statute are “reason to believe” and not “reason to suspect” - *Bir Arjna Enterprises (P) Ltd. vs. ITO 204 ITR 258 (J&K)*.
- ✘ The A.O. may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour - *Sheo Nath Singh vs. CIT 82 ITR 147 (SC)*

# **INCOME ESCAPED ASSESSMENT**

- ✘ If no ITR filed > maximum amount not chargeable to tax**
- ✘ If ITR filed – claimed excessive loss / deduction / relief**
- ✘ TP Report not filed**
- ✘ Income under assessed**
- ✘ Assessed at too low rate**
- ✘ Found to have any asset including financial interest located outside India**
- ✘ ...**





# ART

- × Entrance
- × Appearance
- × Mobile Manners
- × Be a good listner
- × Use of Language
- × Keeping of Files
- × Be Effective Speaker
- × Taking Along Someone
- × Politeness
- × **CONFIDENCE**

# SCIENCE

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- × **Master of Subject**
- × **Knowledge of Procedure**
- × **Knowledge of Terminologies**
- × **Teaching the Authority**
- × **Telling Mistake of Other Assessees**
- × **Don't miss the dates**
- × **Master of Facts**
- × **Say what you have written and write what you say**

# **WRITTEN REPRESENTATIONS**

- × **Use PAN, subject, year..**
- × **Positive approach**
- × **Negate Specific question**
- × **To address**
  - + **Factual position**
  - + **Legal position**

# **DON'TS**

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- × Forget POA**
  - × Misstate the fact**
  - × Cite wrong or overruled cases**
  - × Be eager to get the case done**
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## **PRACTICAL STEPS IN RE-ASSESSMENT**

- × **Check Notice – Object if required, politely**
- × **Reply to Notice – File ITR**
- × **Ask Reasons – Don't force**
- × **Object to reasons !!!**
- × **Attend on dates and submit all relevant documents, which needs to be relied upon later**



**IT'S A MIND GAME**



THANK YOU!



**CA. Pramod Jain**

[pramodjain@lunawat.com](mailto:pramodjain@lunawat.com)

**+91 9811073867**

