

INCOME TAX

Penalties

Taxation Laws (2nd Amendment) Act 2016

Penny Stocks

Presumptive Incomes

PMGKDS 2016

Practical Aspects of Assessment



LUNAWAT & CO.

Chartered Accountants

17th December 2016, Dist. Ctr. Janakpuri

CA. PRAMOD JAIN

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

AGENDA

- ✗ **Taxation Laws (2nd Amendment) Act 2016**
 - + **Demonetization**
 - + **PMGKY 2016 & PMGKDS 2016**
 - + **Penalties**
- ✗ **Presumptive Taxation**
 - + **Section 44AD**
 - + **Section 44ADA**
- ✗ **Penny Stocks**
- ✗ **Practical aspects of Assessment**



ITR DATA AY 2014-15

CATEGORY	NO. OF ITRS FILED (IN LACS)
Individuals	365.13
HUF	9.40
Firm	9.18
Company	7.01
Others	0.54
TOTAL	391.26

ITR DATA AY 2014-15

Income	No. of ITR (in Lacs)	Income (in Crores)
Negative to 0	8.51	
0 to 2.5 Lacs	203.95	385696
5 to 10 Lacs	109.71	382474
5 to 10 Lacs	46.49	313181
10 to 25 Lacs	17.14	253562
25 Lacs to 1 Cr	4.59	199741
	(In Nos)	
1 Cr to 5 Cr	71113	137612
5 Cr to 10 Cr	7075	48949
10 Cr to 25Cr	4158	63112
25 Cr to 50 Cr	1417	48996
50 Cr to 100 Cr	774	53893
100 Cr to 500 Cr	616	128068
Above 500 Cr	165	419934
	85318	2435218

ITR DATA AY 2014-15

- ✖ Only 3.91 Cr. ITRs filed during AY2014-15
- ✖ Total Income in ITRs Rs. 24,35,218 Crs.
- ✖ 2.17% i.e. 8.51 Lakh returns with Nil or negative incomes
- ✖ 92% ITRs contributed 44.40% ITR Incomes
- ✖ 0.21% ITRs contributed 36.98% ITR Incomes
- ✖ 0.0004% ITRs contributed 17.24% ITR Incomes



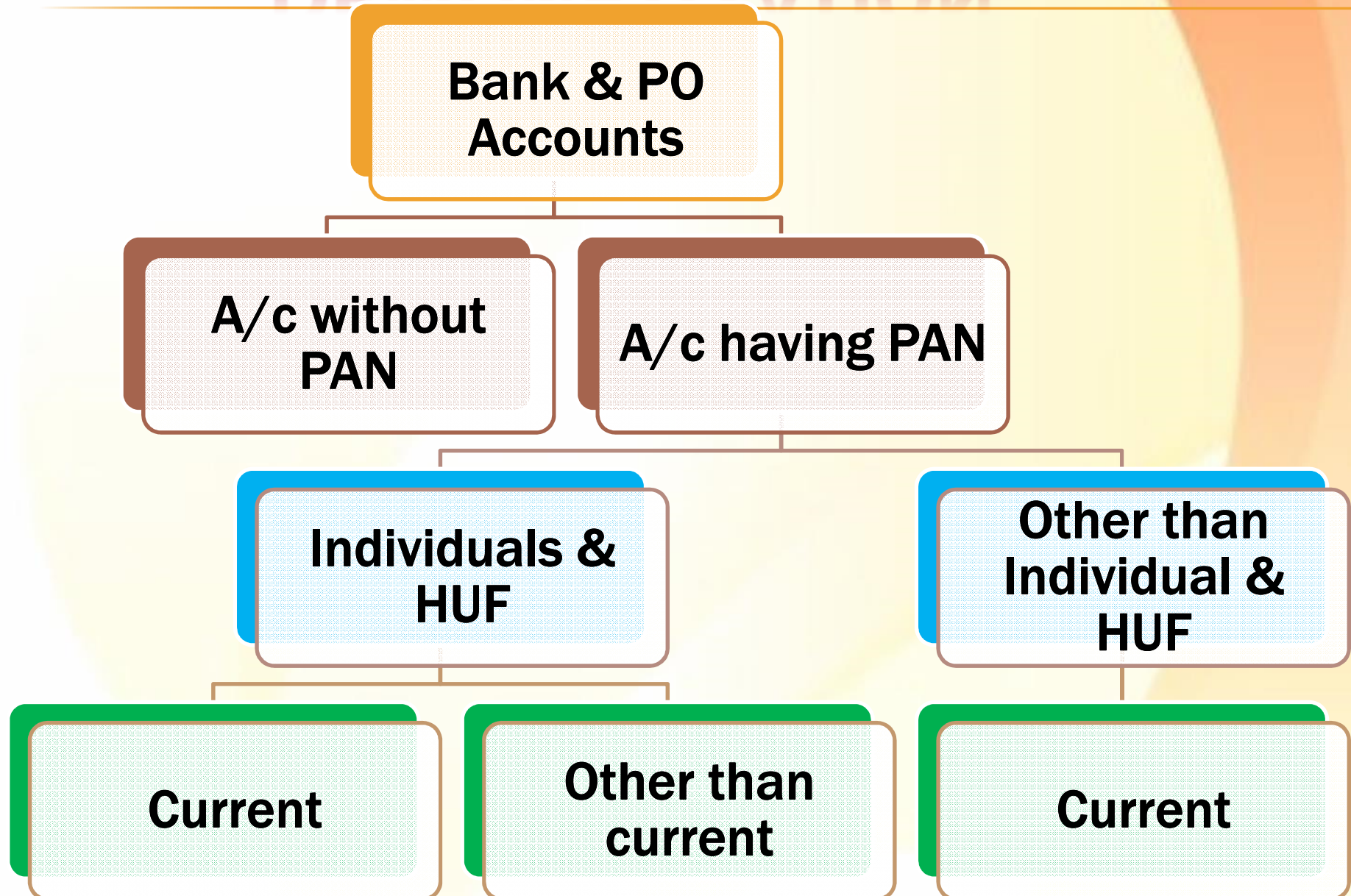
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DEMONETIZATION

- ✗ Notes of Rs. 500/- / Rs. 1000/- not a legal tender w.e.f. 9th November 2016
- ✗ Opportunity given to change through ever changing limits to:
 - + Exchange
 - ✗ Old with New
 - + Deposit - Old
 - + Withdraw – New – bankers own limits
- ✗ Worry about limits !!!!

DEMONETIZATION



DEMONETIZATION

✘ Jan Dhan Accounts

- + No Cheque book account**
- + Benefits?? BPL – limit – 27k p.a.**
- + Consistency??**

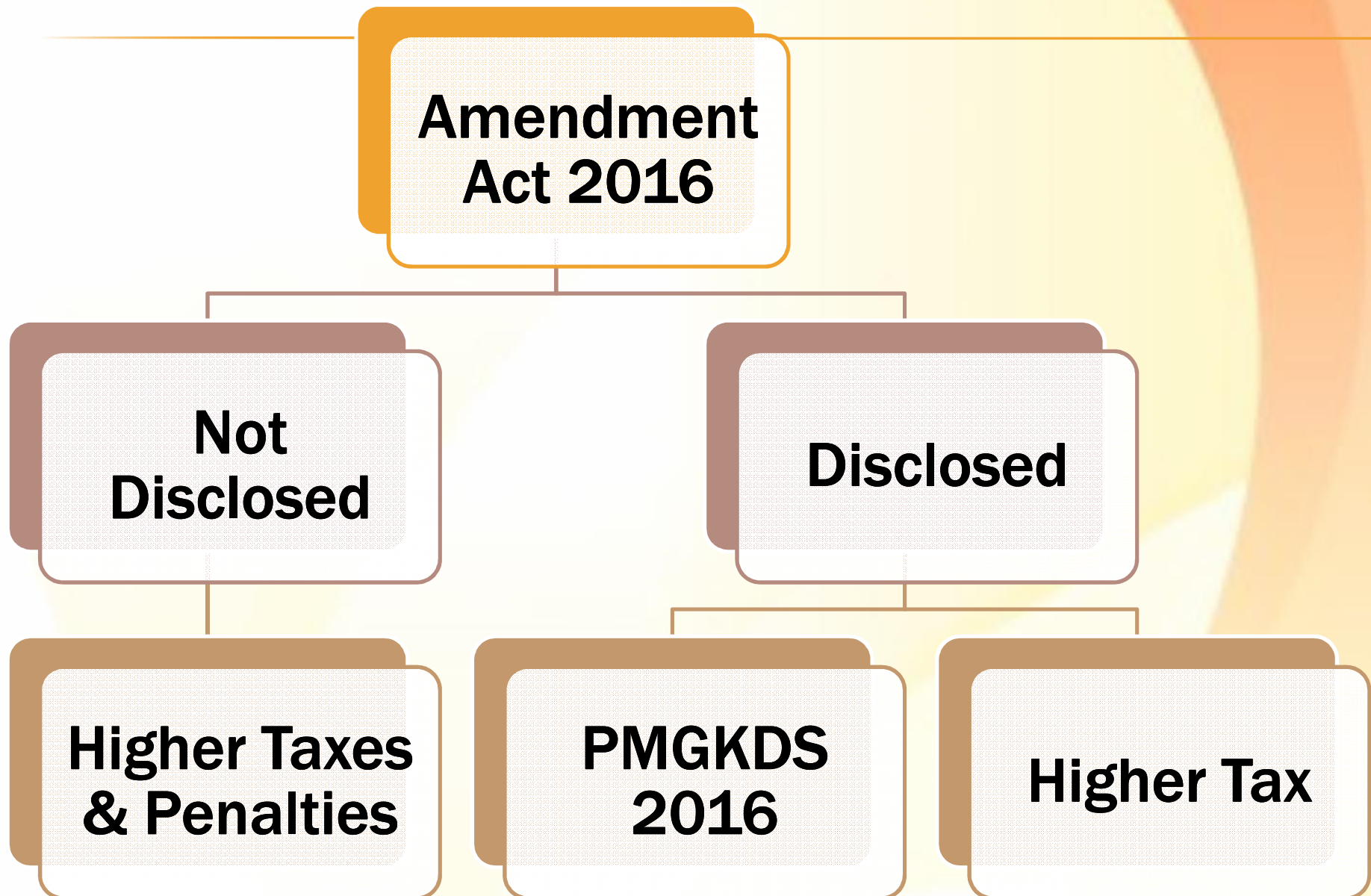
✘ The Limit of Rs. 2.50 L vs. Rs. 10 L

✘ The Limit of Rs. 12.50 L vs. Rs. 50 L

✘ Applicability of Other Laws – VAT, Service Tax, Money Laundering...

DEMONETIZATION & IT

- ✖ **PAN requirement if cash deposited in aggregate >2.50 Lacs in Bank / PO**
- ✖ **AIR Reports**
 - + **31st January 2017:**
 - ✖ **09.11.2016 to 30.12.2016**
 - + **31st May 2017 - FY 2016-17**
- ✖ **Consequence of trying to be smart**
Taxation (2nd Amendment) Act 2016 –
Effective from 15th December 2016



VARIOUS TAXES & PENALTIES

**S.
115BBE**

- Tax if income u/s 68 / 69 / 69A / 69B / 69C / 69 D

S. 270A

- Under reporting – 50%
- Misreporting 200%

271AAB

- Search 10% -source etc
- 60% - no source

271AAC

- Penalty if tax u/s 115BBE

TAX U/S 115BBE

- ✖ **S. 115BBE substituted**
- ✖ **Applicable if Income assessed u/s 68 / 69 / 69A / 69B / 69C / 69D even if reflected in IT Return**
- ✖ **Tax Rate increased from 30% to 60%.**
- ✖ **Plus surcharge u/Chapter II of Finance Act @ 25% i.e. 75% plus... cesses i.e. 77.25%**
- ✖ **Other cases of share capital, loans, !!!**

115BBE – SECTIONS – NO SOURCE

68

- **Cash Credits in books**

69

- **Unexplained Investments**

69A

- **Unexplained Money, Jewellery, bullion, etc**

69B

- **Investments, etc not fully disclosed in books**

69C

- **Unexplained Expenditure**

69D

- **Amount borrowed or repaid in Hundi**

PENALTY U/S 271AAC

- ✖ **New section introduced**
- ✖ **If tax u/s 115BBE paid within relevant previous year – no penalty otherwise penalty @ 10% of tax**
- ✖ **Procedure u/s 274 / 275 to be followed for imposing penalty**
- ✖ **No penalty u/s 270A**
- ✖ **In case of search penalty u/s 271AAB to be levied not u/s 271AAC**

PENALTY U/S 271AAB

- ✘ **In case of search initiated after the Amendment Act – if income declared in statement u/s 132(4) and tax and interest paid & ITR Filed– penalty increased from 10% to 30% of income**
- ✘ **If source not declared or other conditions not satisfied – Penalty fixed @ 60% of income by Finance Act 2016**

PMGKY 2016 & PMGKDS 2016

- ✘ **Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojna 2016**
- ✘ **Chapter IX A introduced in Finance Act.**
- ✘ **Any person including non resident can declare**
- ✘ **Deposit in scheme named as Pradhan Mantri Garib Kalyan Deposit Scheme 2016**
- ✘ **Tax in PMGKY 2016**
- ✘ **Investment in PMGKDS 2016**
- ✘ **Commences on 17th December 2016**
- ✘ **Ends on 31st March 2017**

PMGKY 2016

- ✘ To include cash or deposit in account maintained with Bank / PO for any A. Y. commencing on or before 1.4.2017**
- ✘ Declaration in Form 1**
- ✘ Amount declared not to be included in total income**
- ✘ Certificate in Form 2 within 30 days from end of month in which declaration made**
- ✘ Revision allowed due to omission or wrong statement–within time limit**

PMGKY 2016

- ✖ No deduction of any expenditure or allowance to be allowed against income in respect of which declaration is made.**
- ✖ Tax to be paid @ 30% plus surcharge (PMGKC) @ 33% and penalty @ 10% of income i.e. a total of 49.90%**
- ✖ To be paid before making declaration**
- ✖ Amount paid is not refundable**

PMGKDS 2016

- ✘ To deposit not less than 25% of undisclosed income in PMGKDS 2016 in Form 2**
- ✘ Lock in period of 4 years**
- ✘ Deposit in multiple of Rs. 100/-**
- ✘ Deposit in single payment**
- ✘ Bond ledger A/c with RBI – Certificate in Form 1**

PMGKDS 2016

- ✗ No interest to be paid**
- ✗ Applicant to have PAN**
- ✗ Banks to be nominated to accept deposits**
- ✗ Nomination to be made**
- ✗ Transferable to nominee or legal heir in case of death only**

NOT TO APPLY – CASES SPECIFIED UNDER

- ✗ **Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.**
- ✗ **Offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code**
- ✗ **Narcotic Drugs and Psychotropic Substances Act**
- ✗ **Cases under Black Money Act**
- ✗ **Persons notified under Special Court (Trial of offences relating to securities) Act 1992**
- ✗ **Unlawful Activities (Prevention) Act, 1967,**
- ✗ **Prevention of Corruption Act, 1988,**
- ✗ **Prohibition of Benami Property Transactions Act, 1988**
- ✗ **Prevention of Money-Laundering Act, 2002**

EVIDENCE

**IDS
2016**

- Notwithstanding anything contained in any other law for the time being in force, nothing contained in any declaration made u/s 183 shall be admissible in evidence against declarant for purpose of any proceeding relating to imposition of penalty, other than the penalty leviable u/s 185, or for purposes of prosecution under IT Act or the WT Act.

**PMGKDS
2016**

- Notwithstanding anything contained in any other law for the time being in force, nothing contained in any declaration made u/s 199C(1) shall be admissible in evidence against the declarant for the purpose of any proceeding under any Act other than the Acts mentioned in section 199-0

115BBE VS. PMGKDS

- ✖ **Assumptions:**
- ✖ **Amount to be disclosed Rs. 10 Lakhs**
- ✖ **No Source**
- ✖ **Tax to be paid during the year, hence no penalty**

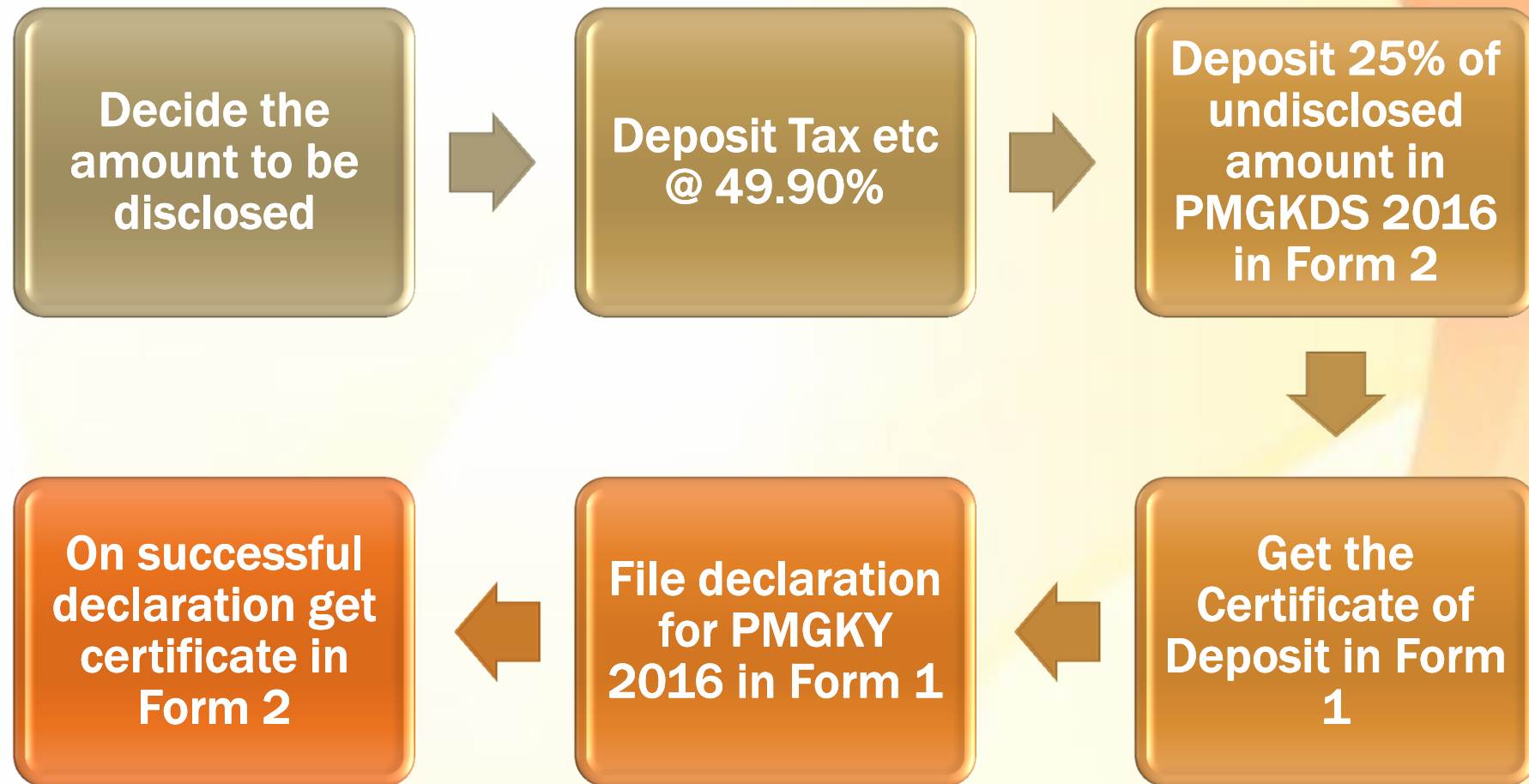
115BBE VS. PMGKDS

	S.115BBE	PMGKDS
Tax to be paid	7.725	4.99
To be deposited in Scheme	Nil	2.50
Immediate available in Hand	2.275	2.51
Intt @ 9% earned for 4 years	0.82	0.90
Money in hand after 4 years	3.095	5.91

TAX NOT PAID – 115BBE APPLICABLE

	143(3) / 147	153BC
Tax to be paid on assessment	7.725	7.725
Penalty u/s 271AAC	0.75	NA
Penalty u/s 271AAB (No source)	NA	6.00
Total (Plus Interest)	8.475	13.725

PMGKY 2016 & PMGKDS 2016



DEMONETIZATION – WHAT TO DO?

- ✗ **Deposit cash as per books / cash flow – as on 8th November 2016**
- ✗ **Avail PMGKY 2016 & PMGKDS 2016 if no source**
- ✗ **Limited Scrutiny**
- ✗ **Ultimately IT assessment to be done**
- ✗ **Revised ITR for AY 2015-16 !!!!!**
- ✗ **Do not get swayed by rumours and forwarded messages**
- ✗ **Believe in your ability and knowledge..**
- ✗ **Time to contribute to the nation and Profession**

Section 44AD



Presumptive Tax Scheme

PRESUMPTIVE TAXATION

44AD

- **PGBP other than professionals and agents**

44ADA

- **Professionals**

44AE

- **Goods Carriages**

PRESUMPTIVE TAXATION

- **Section 44AD**
- If income **CLAIMED** to be under presumptive taxation, then:
 - No books of accounts u/s 44AA
 - No audit u/s 44AB
 - Deemed income of 8% and above
 - All deductions u/s 30 to 38 deemed to have been given full effect.

PRESUMPTIVE TAXATION - CHANGES

- **Limit u/s 44AD increased from 1 Cr to 2 Cr**
- **S. 44ADA introduced for Professionals – Limit 50 Lacs – Deemed Income -50%**
- **For firms - partners salary & interest not allowable for business as well as professional**
- **If benefit u/s 44AD not claimed in 1 year then cannot claim in next 5 years. In such case to maintain books if income > maximum amount not chargeable to tax and audit u/s 44AB**
- **No similar clause for professionals u/s 44ADA**
- **Advance Tax for 44AD only– 15th March**

APPLICABILITY OF 44AD / 44AB ON MR. A

**AY 2017-18 – T – Rs. 120 Lacs . P
– 10 L, TI – 9 L**

• Y/N

**AY 2018-19 – T – Rs. 120 Lacs . P
– 8 L, TI – 6 L**

• N/Y

**AY 2019-20 – T – Rs. 70 Lacs . P –
10 L, TI – 9 L**

• N/Y

**AY 2020-21 – T – Rs. 60 Lacs . P –
10 L, TI – 2 L**

• N/N

40A VS 44AD

- Both s. 40A & s. 44AD use non-obstante clause
- Where there is a conflict between a general and special provisions, the latter shall prevail - *Union of India & Anr. vs. India Fisheries (P) Ltd. (1965) 57 ITR 331(SC).*
- This rule is subject to the condition that there is nothing in the general provisions, express or implied, indicating any intention to the contrary - *CIT vs. Shahzada Nand & Sons (1966) 60 ITR 392 (SC)*

40A VS 44AD

- **Applying the said rules of interpretation, it is clear that since s. 44AD is a special provision whereas s. 40A is a general provision & there is nothing in s. 40A indicating any intention to the contrary, s. 40A will have no application where a case is covered by s. 44AD**
- **Also s. 44AD is a later section and Legislature must have deliberately used in that section the non-obstanta clause despite the fact that s. 40A, which is already on the statute, is using the same expression.**

APPLICABILITY OF 44AD(44ADA) / 44AB - AY 2017-18

**Mfg. - Turnover – 120L; NP – 10 L; 80-IA – 7 L;
TI-2.40L**

- AD - No
- AB - Yes

**Trading- Turnover – 90L; NP -3L; Architect –
Fee – 55 L; NP- 15 L; TI-7L**

- AD – No
- ADA - No
- AB - Yes

**Doctor – Trading Turnover – 120L - NP – 8 L;
Fee – 27 L – NP 15 L; TI- 20 L**

- AD – No
- ADA - Yes
- AB - Yes

**Trading; Turnover -120L; Commission - 2L; NP-
5L; TI 4L**

- AD - No
- AB - Yes

SECTION 44AD ESSENTIALS

- **Should be eligible assessee**
 - **Ind., HUF, Firm (except LLP); and**
 - **No s. 10A, 10AA, 10B, 10BA & Chp VIA Part C**
- **Should be doing eligible business**
 - **Any except 44AE; and**
 - **Turnover > 2 Crs**
- **Section not applicable to a person carrying:**
 - **Profession**
 - **Commission or brokerage**
 - **Agency business**
- **Deemed profit 8% or more**
- **Commensurate with bank account !!!**

SECTION 44ADA ESSENTIALS

- **Should be engaged in profession**
 - **section 44AA read with rule 6F**
- **Gross receipt > 50 Lakhs**
- **Deemed profit 50% or more**
- **Commensurate with bank account !!!**

PROFESSION

- **Section 44AA read with Rule 6F**
 - **Accountancy**
 - **Architectural**
 - **Authorised Representative**
 - **Company Secretary**
 - **Engineering**
 - **Film Artist, actors, cameramen, editor.....**
 - **Interior Decoration**
 - **Legal**
 - **Medical**
 - **Technical Consultancy**
 - **Information Technology**

PROFESSION

- **Held as business**
 - **Advertising agent**
 - **Clearing, forwarding & shipping agents**
 - **Insurance agents**
 - **Travel agent**
 - **Stock and share broking**
 - **Courier agency**
 - **Nursing Home**
- **Are they covered u/s 44AD??**



WHAT IS PENNY STOCK

- ✖ **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
- + www.allpennystocks.com
- + www.pennystockobserver.com
- + www.pennystocklist.com
- + www.smartmoneygoal.in
- + 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=3NZtaIFaFYw>

REGULATOR

- ✖ **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.**

OLD DECISIONS

➤ 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.

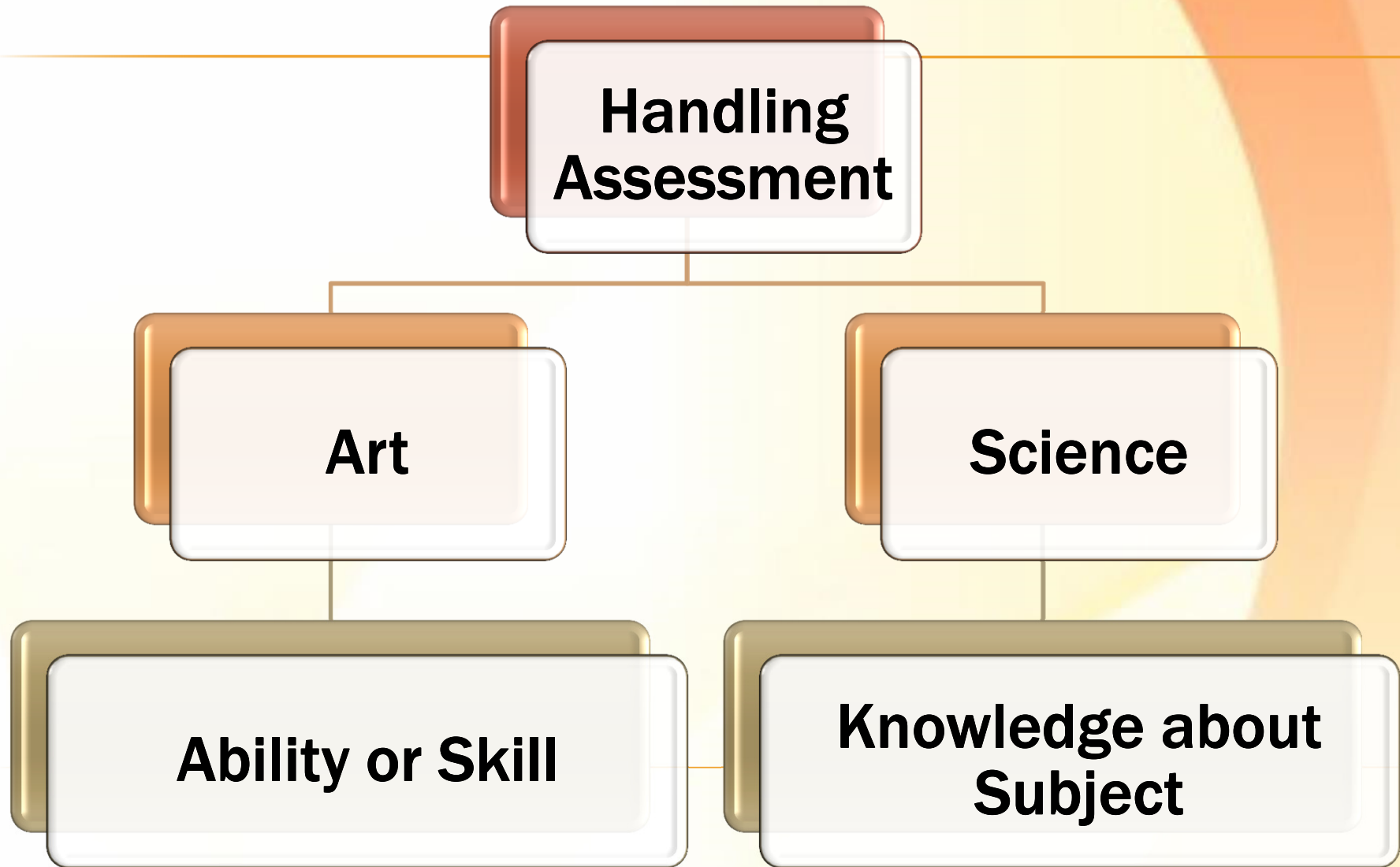
Assessment

Regular [143(3)]

Best Judgment
[144]

Reassessment
[147]

Block [158BC]



ART

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

SCIENCE

- ✗ **Master of Subject**
- ✗ **Knowledge of Procedure**
- ✗ **Knowledge of Terminologies**
- ✗ **Teaching the Authority**
- ✗ **Telling Mistake of Other Assesseees**
- ✗ **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

- ✗ **Forget POA**
- ✗ **Misstate the fact**
- ✗ **Cite wrong or overruled cases**
- ✗ **Be eager to get the case done**



IT'S A MIND GAME

Thank You!



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