

# **ASSESSMENT PROCEEDINGS UNDER INCOME TAX ACT, 1961**

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# ASSESSMENT PROCEEDINGS

## UNDER INCOME TAX ACT, 1961

### 1. DEFINITION OF ASSESSMENT AND REGULAR ASSESSMENT

Section:- 2(8), 2(40)

**Section 2(8)** :- "assessment" includes reassessment.

**Section 2(40)**:- "regular assessment" means the assessment made under [section 143\(3\)](#) or [section 144](#).

### 2. DEFECTIVE RETURN

Section:- 139(9)

**This section has an overriding effect over all the provisions of Income Tax Act**

#### ***Rectification of Defect:-***

The Assessing Officer may at his discretion intimate to the assessee the defect in the return.

***Time Limit for rectification:*** - The time limit for rectification shall be **15 days from the date of such intimation** or such extended period allowed by the Assessing Officer.

<p><i>The assessee <u>fails to rectify the defect within 15 days</u> or such extended time limit</i></p>	<p><i>Assessee <u>rectifies the defect after the expiry of 15 days</u> or such extended time <u>but before the assessment is made</u></i></p>
<p>(i) The return shall be treated as an <u>invalid return</u></p> <p>(ii) The <u>provisions</u> of this Act shall <u>apply as if the assessee had failed to furnish the return</u></p>	<p>The Assessing Officer <u>may condone the delay</u> and treat return as a valid return.</p>



**SECTION 292B: Return, Notice etc. not to be invalid on certain grounds.**

In this connection, a reference may be made to section 292B of the Income-tax Act which provides that no return of income, assessment, notice, summons or other proceedings furnished, made, issued or taken shall be invalid merely by reason of mistake, defect or omission in such return of income, order, notice, summons etc.

The provision in section 139(9), however, overrides other provisions of the income-tax Act (including section 292B) in this regard and in a case where any of the specified defect is not removed within the time allowed, the return shall be treated as an invalid return and the provisions of the Income-tax Act apply as if the assessee had failed to furnish the return. – ***Circular No. 281, dated 22-9-1980.***

### 3. INTIMATION / POPULARLY KNOWN AS SUMMARY ASSESSMENT

#### Section:- 143(1)

(1) Where a return has been made under section 139, or in response to a notice under section 142(1), such return shall be processed in the following manner, namely:-

- (a) the total income or loss shall be computed after making the following adjustments, namely;
- i. any arithmetical error in the return or
  - ii. any incorrect claim, if such incorrect claim is apparent from any information in the return;
  - iii. disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;
  - iv. disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;
  - v. disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139;  
or
  - vi. addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

**Provided** that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

**Provided** further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made.

- (b) the intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable, or the amount of refund due to, the assessee after aforesaid corrections;
- (c) the amount of refund due to the assessee shall be granted to him.

Provided that intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax or interest is payable by, or no refund is due to him.

#### **Time limit**

No intimation shall be sent under this section after the expiry of one year from the end of the financial year in which the return is made. The acknowledgment of return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to the assessee, and where no adjustment has been made.

#### **Meaning of incorrect claim**

It means such claim on the basis of an entry, in the return-

- (a) of an item, which is inconsistent with another entry of the same or some other item in such return;
- (b) in respect of which, information required to be furnished to substantiate such entry, has not been furnished;
- (c) in respect of a deduction, where such deduction exceeds specified statutory limits which may have been expressed as monetary amount or percentage or ratio or fraction.

**Section 143 (1D):** The processing of a return shall not be necessary before the expiry of one year from the end of the financial year in which return is submitted, where a notice has been issued to the assessee under section 143 (2).

However, return shall be processed under section 143(1) before the issuance of order under section 143(3).

#### 4. NOTICE FOR SCRUTINY/ REGULAR ASSESSMENT

**Section:-** 143(2)

To ensure that the assessee has not

(a) understated the income or (b) computed excessive loss or (c) underpaid the tax in any manner;

The Assessing Officer or the prescribed income-tax authority may **serve a notice** on the assessee requiring him on a date to be specified in this notice, either:

(i) to attend the office of Assessing Officer; or (ii) to **produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return.**

**Time limit:- No notice shall be served after the expiry of 6 months from the end of the financial year in which the return is furnished.**

## 5. NOTICE DEEMED TO BE VALID IN CERTAIN CIRCUMSTANCES

### Section:- 292BB

Where an assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was—

- (a) not served upon him; or
- (b) not served upon him in time; or
- (c) served upon him in an improper manner:

**Provided that** nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment.

## 6. INQUIRY BEFORE ASSESSMENT

### Section:- 142(1)

#### Notice for filing return of income

Notice shall be issued to any person requiring him to furnish return of income if the said person has not filed the return of income within the time allowed u/s. 139(1).

The Assessing Officer may serve notice on any person, **whether he has filed return or not** requiring him to:



Requirement	Restrictions
Produce or cause to be produced, such accounts or documents as he may require	Accounts shall not relate to a <b>period more than three</b> years prior to the previous year.
Furnish such information in writing as he may require including a statement of all assets and liabilities whether included in the accounts or not.	Previous approval of the Joint Commissioner shall be obtained before requiring the assessee to furnish a statement of assets and liabilities not included in the accounts.

## 7. SPECIAL AUDIT

### Section:- 142(2A)

The direction for special audit can be issued at any stage of proceedings if

- (i) the Assessing Officer having regard to
  - the nature and complexity of the accounts,
  - volume of the accounts,
  - doubts about the correctness of the accounts,
  - multiplicity of transactions in the accounts or
  - specialised nature of business activity of the assessee,
  - and in the interest of revenue, is of the opinion that the accounts shall be audited. **(Amendment by FA 2013, wef 1<sup>st</sup> June, 2013)**
- (ii) Prior approval of the Chief Commissioner or Commissioner shall be obtained.
- (iii) However, the Assessing Officer shall not direct the assessee to get the accounts audited unless the assessee has been given a reasonable opportunity of being heard.

### ***Nomination of Auditor and expenses of audit***

- (i) The Chief Commissioner / Commissioner shall nominate the auditor and his decision in this regard is final.
- (ii) On or after the 1st day of June, 2007, the expenses of, and incidental to, such audit (including the remuneration of the Accountant) shall be determined by the Chief Commissioner or Commissioner and the expenses so determined shall be paid by the Central Government.

### ***Time limit for submission of audit report and law relating to re-audit.***

- (i) The audit report shall be furnished within the period specified by the A. O. or extended time. Such extension can be done either by the A.O. *on his own motion (Amendment Finance Act, 2008)* or on application made by assessee.
- (ii) The total time limit (including such extended time) shall not exceed 180 days.
- (iii) Assessing Officer can direct the assessee to get his accounts audited under this section even if the accounts are already audited under this Act or under any other law.- ***Super Cassettes Industries Ltd. V CIT (1999) 102 Taxman 202 (Delhi)***.

## **8. OPPORTUNITY OF BEING HEARD**

### **Section:- 142(3)**

The assessee shall be given a reasonable opportunity of being heard in respect of any material gathered on inquiry u/s. 142 / 142(2A) and proposed to be used in the assessment except assessment to be completed u/s. 144.

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**Practical 1**

Mr. X had not filed return for A.Y. 2017-18 though due date was 30/9/2017. He was in receipt of notice u/s 142(1) requiring him to file return on or before 15/12/2017. Mr. X didn't respond. A.O. issued another notice u/s 142(1) requiring him to file return on or before 31/12/2017. He filed return on 15/2/18. On 19/2/18 he received an assessment order u/s 144 and order was signed by A.O. on 13/2/18. Mr. X challenged assessment order on following grounds:

- (i) Assessment had been framed without giving opportunity of being heard.
- (ii) A.O. had not acted upon the return which was very well in time as per section 139(4).

Discuss validity of contentions raised by Mr. X.

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**Solution**

- (i) If notice u/s 142(1) is received and it is not complied with then as per sec 142(3) (opportunity of being heard), no opportunity of being heard is to be given to the assessee particularly when assessment is completed u/s 144.
- (ii) As per provision of sec 139(4) belated return can be submitted –  
  
before the end of relevant A.Y. (31/3/2018).

Or

before completion of assessment. (13/2/2018). {*whichever is earlier*}

However, Mr. X submitted return on 15/2/2018. Therefore, return submitted by Mr. X is not valid.

Hence, both the contentions raised by Mr. X are not tenable.

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**Readers Note:**

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## 9. ESTIMATES BY VALUATION OFFICER IN CERTAIN CASES

### Section:- 142A

- (1) The Assessing Officer may, for the purposes of assessment or reassessment, make a reference to a Valuation Officer to estimate the value, including fair market value, of any asset, property or investment and submit a copy of report to him.
- (2) The Assessing Officer may make a reference to the Valuation Officer whether or not he is satisfied about the correctness or completeness of the accounts of the assessee.
- (3) The Valuation Officer, on a reference made, shall, for the purpose of estimating the value of the asset, property or investment, have all the powers that he has under section 38A of the Wealth-tax Act, 1957.
- (4) The Valuation Officer shall, estimate the value of the asset, property or investment after taking into account such evidence as the assessee may produce and any other evidence in his possession gathered, after giving an opportunity of being heard to the assessee.
- (5) The Valuation Officer may estimate the value of the asset, property or investment to the best of his judgment, if the assessee does not co-operate or comply with his directions.
- (6) The Valuation Officer shall send a copy of the report of the estimate made, to the Assessing Officer and the assessee, within a period of six months from the end of the month in which a reference is made.
- (7) The Assessing Officer may, on receipt of the report from the Valuation Officer, and after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.

## 10. SCRUTINY/REGULAR ASSESSMENT

### Section:- 143(3)

- (i) The Assessing Officer shall take into account all relevant material gathered by him and also the evidence produced by the assessee.
- (ii) On this basis, he shall make an assessment of the total income or loss of the assessee.
- (iii) On the basis of such assessment, he shall determine the sum payable by the assessee or refund due to him.

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### Practical 2

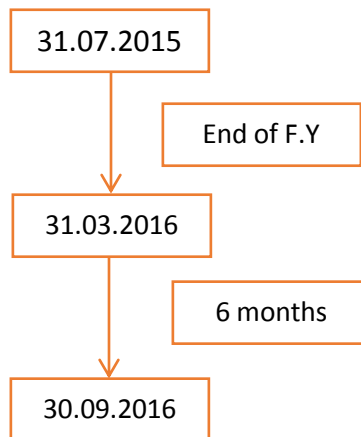
Mr. Joy filed return for the **A.Y. 2015-16** on **31.07.2015**, A.O. thereafter served notice u/s 143(2) requiring him to produce evidence. Notice was dated **30/09/2016**. However, it was served to Mr. Joy on **10/10/2016**. During the course of hearing, Mr. Joy challenged the jurisdiction of assessing officer on the ground that the assessing officer failed to serve notice under section 143(2) in time. Whether contention raised by Mr. Joy is valid?

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### Solution

Whenever assessment is sought to be made, assessing officer must assume proper jurisdiction over the case of taxpayer, by issuing and serving valid notice as per the provisions of the Income Tax Act, 1961.

Section 143(2) requires service of notice within six months from the end of financial year in which return is furnished.



Considering the above time limit, notice for scrutiny must be served to Mr. Joy on or before **30/9/2016**, while in present case, it has been served on **10/10/2016**. Therefore, contention raised by Mr. Joy for challenging jurisdiction of the assessing officer is valid.

As a result, any order passed by the assessing officer under section 143(3) of the Act, in case of Mr. Joy, for the **A.Y. 2015-16** shall be considered as null and void.

**Readers Note:**

**Practical 3**  **Section 143(1) – section 143(2)**

Mr. X filed return for **A.Y.2017-18** on **15/7/2017** declaring income by Rs.3,51,000. A.O. issued intimation u/s 143(1) and determined income at Rs. 3,61,000. A.O. therefore raised notice of demand of Rs.1,200. Intimation was served to assessee on **10/12/2017**. Assessee met demand in full on **12/12/2017**. A.O. thereafter served notice u/s 143(2) on **15/9/2018** requiring him to produce the evidence on which Mr. X relied in support of the return furnished. Mr. X challenged validity of notice on the ground that once summary assessment is done, notice for scrutiny assessment cannot be served. Whether contention raised by Mr. X is valid?

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### **Solution**

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Intimation u/s 143(1) in fact is not an assessment, it is merely intimation. It is a mechanical process adopted by Income Tax department to make certain adjustments based on information contained in the return like disallowance of excess depreciation, reducing claim of 80C, wrong calculation of tax etc.

In this entire process, neither taxpayer nor the evidences are called upon to verify the correctness of return filed. Therefore, the contention raised by Mr. X challenging the scrutiny notice is not valid.

### **Readers Note:**

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### **Practical 4 SECTION 143(1)–Section 143(1D)-Section 143(3)-GEB's Case**

Mr. X, filed return for **A.Y. 2017-18** on **31/8/17**. He received notice for scrutiny on **31/12/17** requiring him to produce books of a on **15/1/18**. He responded and during the course of hearing, A.O. found error in rate of depreciation charged on plant and machinery. Therefore, assessing officer would like to issue intimation of demand u/s 143(1). Advice assessing officer.

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### **Solution**

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#### **Position before amendment made by Finance Act, 2016**

As discussed in earlier Practical, 143(1) is merely intimation while 143(3) is an assessment. Therefore income assessed u/s 143(3) prevails over income determined/ processed u/s 143(1).

Further, **Supreme Court in case of CIT v. Gujarat Electricity Board 260 ITR 84 (2003)** held that Once a regular assessment proceeding has been commenced under section 143(2), there is no need for a summary proceeding under section 143(1).

Considering the above, the assessing officer is advised not to issue intimation under section 143(1) but to make addition in relation to depreciation while passing order under section 143(3).

### **Position after amendment made by Finance Act, 2016**

Section 143(1D), however has been amended and it states that the return shall be processed under section 143(1) before the issuance of order under section 143(3). Considering the amendment, the assessing officer is advised to issue intimation under section 143(1) before passing issuance of order section 143(3) of the Act.

#### **Readers Note:**

## **11. BEST JUDGMENT ASSESSMENT**

**Section:- 144**

### ***When Best Judgment assessment can be made?***

<b>Under Section 144</b>	<b>Under Section 145(2)</b>
<p><i>Where a person <u>fails to</u></i></p> <p>(i) <u>Furnish</u> a return <u>u/s. 139</u> or</p> <p>(ii) Comply with <b>all the terms</b> of <u>notice</u> issued <u>u/s. 142(1)</u> or</p> <p>(iii) Comply with a <u>direction</u> issued u/s. 142(2A) i.e. <u>Audit</u> of accounts</p> <p>(iv) Comply with <b>all the terms</b> of a <u>notice</u> issued <u>u/s. 143(2)</u></p>	<p>(a) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee</p> <p>(b) No method of accounting has been regularly followed by the assessee</p> <p>(c) Where the "income computation and disclosure standards" notified by the Central Government have not been regularly followed by the assessee.</p>

### ***Opportunity of being heard:-***

- (i) The assessee will be given an opportunity by a show cause notice as to why assessment shall not be completed to the best judgement of the Assessing Officer.
- (ii) **Opportunity need not be given where notice u/s. 142(1) has already been issued.**



## 12. THE POWERS OF JOINT COMMISSIONER TO ISSUE DIRECTIONS

Section:- 144A

### ***When it can be issued?***

The Joint Commissioner can call for and examine the records of any proceeding in which an assessment is pending either

- SUO MOTU (on his own motion) or
- On a reference made by the Assessing Officer or
- On an application by an assessee.

### ***Issue Directions:***

Having regard to the nature of the case, amount involved or for any other reason, the Joint Commissioner can issue directions to the Assessing Officer to enable him to complete the assessment.

The directions issued shall be binding on the Assessing Officer.

### ***Opportunity:***

If the directions are prejudicial to the assessee, then he must be given a opportunity of being heard.

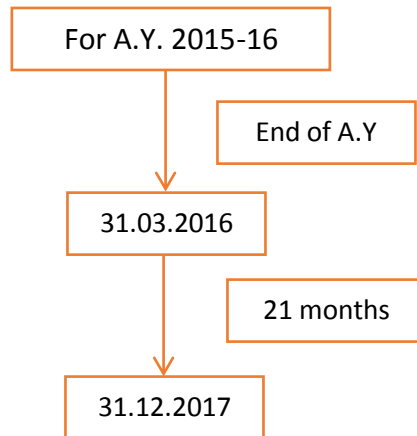
## 13. TIME LIMIT FOR COMPLETION OF ASSESSMENTS AND CERTAIN PERIODS ARE EXCLUDED FROM THE TIME LIMIT FOR PASSING ASSESSMENT ORDERS

Section:- 153(1), 153(4) and Explanation 1 to Section 153

### ***Time limit for completion of assessment under section 143(3)/ 144***

1. Within 21 months **from** the end of relevant assessment year.
2. Within **33 months** from the end of relevant assessment year in case reference is made to TPO under section u/s 92CA (1).

Considering this time limit, for the assessment year **2015-16**, the assessing officer shall complete the assessment under section 143(3) or 144 on or before



**However, the following time periods are excluded from the time limit for passing assessment orders.**

- (i) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the proviso to [section 129](#); or
- (ii) the period during which the assessment proceeding is stayed by an order or injunction of any court; or
- (iii) the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under section 142(2A) and—
  - (a) ending with the last date on which the assessee is required to furnish a report of such audit under that sub-section; or
  - (b) where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Principal Commissioner or Commissioner; or

- (iv) the period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer under section 142A(1) and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer; or

**After extending, if the period** available to the Assessing Officer for making an order is less than sixty days, then same shall be extended to sixty days.

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**Practical 5**

For the **A.Y. 2015-16**, the case of Good Better Best Private Ltd. was selected under scrutiny. During scrutiny proceedings, the Assessing Officer, on **15-12-17**, had made a reference to Valuation Officer under section 142A for determining fair market value under section 69 of Income Tax Act. Thereafter, valuation officer determined fair market value and sent valuation report to Assessing Officer on **30-01-2018**. Find out the revised time limit available with assessing officer for completion of assessment under section 143(3).

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**Solution**

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**Step 1: Regular Time Limit under section 153**

21 months from the end of Assessment Year

End of the Assessment year + 21 months

31.3.2016 + 21 months

31.12.2017

**Step 2: Revised Time Limit**

Original Time Limit + days lost (the period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer under sub-section (1) of [section 142A](#) and ending with the

date on which the report of the Valuation Officer is received by the Assessing Officer.)

31.12.2017 + 46 days

15.02.2018

**Step 3: Minimum Time Limit**

Day on which authority can reassume jurisdiction + 60 days

30.01.2018 + 60 days

31.03.2018

**Step 4: Effective Time Limit**

Step 2 or Step 3 whichever is later

31.03.2018

**Readers Note:**

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**14. NOTICE OF DEMAND**

**Section:- 156**

When any tax, interest, penalty or any other sum is payable in consequence of any order passed, the Assessing Officer shall serve upon the assessee, a notice of demand in the prescribed form specifying the sum so payable.

Where any sum is determined to be payable by the assessee or by the deductor or by the collector under section 143(1) or section 200A (1) or 206CB(1), then intimation issued under those sections shall be deemed to be a notice of demand for the purpose of section 156.



**SECTION 220(1): Time limit for payment of tax mentioned in demand notice**

Any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under section 156 shall be paid *within thirty days of the service of the notice* at the place and to the person mentioned in the notice.

However, where the Assessing Officer has any reason to believe that it will be detrimental to revenue if the full period of thirty days aforesaid is allowed, he may, with the previous approval of the Joint Commissioner, direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of thirty days aforesaid, as may be specified by him in the notice of demand.



**SECTION 246A: Appeal to Commissioner (Appeals)**

**15. AMOUNT OF TAX PAYABLE BEFORE FILING APPEAL**

**Section:- 249(4)**

No appeal shall be admitted unless at the time of filing of appeal:-

- (a) Where return has been filed by the assessee, the assessee has **paid the tax** due on the income returned by him.
- (b) Where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him.

Provided that an application made by the Appellant in a case falling under clause (b) above, the Appellate Authority may, for any good and sufficient reason to be recorded in writing, exempt him from the payment of whole or part of such tax.

## 16. WHEN ASSESSEE SHALL BE DEEMED TO BE IN DEFAULT?

**Section:- 220(4)**

If the demand is not paid within the time limit under section 220 (1) [generally thirty days or lesser than 30 days], at the place and to the person mentioned in the said notice the assessee shall be deemed to be in default.

## 17. ASSESSEE MAY NOT BE DEEMED TO BE IN DEFAULT IN CERTAIN CASES ALTERNATIVELY, IT IS CALLED APPLICATION FOR STAY OF DEMAND ALTERNATIVELY, IT IS CALLED APPLICATION FOR KEEPING DEMAND IN ABEYANCE

**Section:- 220(6)**

Section 220(6) provides that where an assessee has presented an appeal under section 246A, then, the Assessing Officer may, in his discretion, and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount of dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of.

### **Consider following case study:**

Gajanan Agencies made an application for stay of demand under section 220(6) to the Assessing Officer. Assessing officer directed assessee to pay the demand in 10 equal monthly instalments. Gajanan Agencies challenged this order by a way of writ petition before Madras High Court. Following are the major observations of the Kerala High Court – **Gajanan Agencies v. ITO 210 ITR 865 (1994)**

- (a) It was difficult to read this order as an order contemplated under section 220(6). This order was another mode of enforcing the recovery of tax.
- (b) It was apparent that the proceedings for collection of tax had not been kept in abeyance at all.
- (c) By virtue of this order, the assessee was compelled to pay the entire amount in 10 equal instalments.
- (d) It appeared that the order was intended to gather tax and not to stay the collection of tax as contemplated under section 220(6).
- (e) The Assessing Officer while acting under section 220(6) should not act as a mere tax-gatherer but as a quasi-judicial authority.**

**18. WHAT SHALL BE THE NEXT COURSE OF ACTION IF ASSESSING OFFICER REFUSES TO GRANT THE STAY?**

**Section:-**

Assessee, in the event of refusal to grant the stay by assessing officer, can very well approach Commissioner (Appeals) to grant the stay. Because, the Commissioner (Appeals) has inherent power to stay recovery proceedings—**Paulsons Litho Works v. ITO 1994 2008 ITR 676 (Mad.) (SMC).**

Further, assessee can straight away approach Commissioner (Appeals) for staying collection of tax, even though, he has not filed an application under section 220(6) to the assessing officer—**Kesav Cashew Company v. Deputy CIT (1994) 201 ITR 1014 (Ker.)**

## 19. RECENT GUIDELINES OF CBDT ON STAY OF DEMAND

### Section:-

(1)

**Press Information Bureau**

**Government of India**

**Ministry of Finance**

03-March-2016 17:41 IST

**CBDT issues Revised Guidelines for stay of demand at the First Appeal Stage; Decision of the Board to provide significant relief to the taxpayers in matters relating to grant of stay and recovery of demand by reducing arbitrariness in the disposal of stay petitions where the tax demand is contested at the First Appellate stage.**

With a view to streamline the process of grant of stay of demand when the case of the taxpayer is pending before Commissioner (Appeals) and to standardize the quantum of lump-sum payment required to be made by the assessee as a pre-condition for stay of demand disputed, the Central Board of Direct Taxes (CBDT) has issued fresh guidelines to the field authorities of the Income Tax Department.

Under the revised guidelines, where the outstanding demand is disputed before Commissioner (Appeals), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand. In case, any deviation from the standard pre-payment of 15% is proposed by the Assessing Officer, he shall refer the matter to the administrative Principal Commissioner or Commissioner, who after considering all relevant facts shall decide the quantum/ proportion of demand to be paid by the assessee as lump sum payment for granting a stay of the balance demand. In a case, where stay of demand is granted by the Assessing Officer on payment of 15% of the disputed demand and the assessee is still aggrieved, he may approach the jurisdictional administrative Principal Commissioner or Commissioner for a review of the decision of the assessing officer.



This decision of the Board is expected to provide significant relief to the taxpayers in matters relating to grant of stay and recovery of demand by reducing arbitrariness in the disposal of stay petitions where the tax demand is contested at the First Appellate stage.

The Office Memorandum dated 29.02.2016 issued in this regard is available on the website of the Department [www.incometaxindia.gov.in](http://www.incometaxindia.gov.in).

**(2) SECTION 220 OF THE INCOME-TAX ACT, 1961 - COLLECTION AND RECOVERY OF TAX - WHEN TAX PAYABLE AND WHEN ASSESSEE DEEMED IN DEFAULT - RECOVERY OF OUTSTANDING TAX DEMANDS - PARTIAL MODIFICATION OF INSTRUCTION NO.1914, DATED 21-3-1996 TO PROVIDE FOR GUIDELINES FOR STAY OF DEMAND AT FIRST APPEAL STAGE  
OFFICE MEMORANDUM [F.NO.404/72/93-ITCC], DATED 31-7-2017**

Instruction No. 1914 dated 21-3-1996 contains guidelines issued by the Board regarding procedure to be followed for recovery of outstanding demand, including procedure for grant of stay of demand.

*Vide* [O.M. NO.404/72/93-ITCC dated 29-2-2016](#). revised guidelines were issued in partial modification of Instruction No 1914, wherein, *inter alia, vide* para 4(A) it had been laid down that in a case where the outstanding demand is disputed before CIT(A). the Assessing Officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand, unless the case falls in the category discussed in para (B) there under Similar references to the standard rate of 15% have also been made in succeeding paragraphs therein.

The matter has been reviewed by the Board in the light of feedback received from field authorities. In view of the Board's efforts to contain over pitched assessments through several measures resulting in fairer and more reasonable assessment orders, the standard rate of 15% of the disputed demand is found to be on the lower side. Accordingly, it has been decided that the standard rate prescribed in O.M. dated 29-2-2016 be revised to 20% of the disputed demand, where the demand is contested before CIT(A). Thus, all references to 15% of the disputed demand in the aforesaid O.M dated 29-2-2016 hereby

stand modified to 20% of the disputed demand Other guidelines contained in the O.M. dated 29-2-2016 shall remain unchanged.

These modifications may be immediately brought to the notice of all officers working in your jurisdiction for proper compliance

## 20. CONCEPT – OPPORTUNITY OF BEING HEARD AS A PRINCIPLE OF NATURAL JUSTICE

### Practical 6

Suresh Chandra Gupta HUF has filed the income tax return. The return was selected for scrutiny by serving valid notice under section 143(2). The assessment was completed under section 143(3) in the name of Mr. Suresh Chandra Gupta, Individual. At no point of time before completing the assessment, the assessing officer gave any notice to the taxpayer that his claim for assessment in the status of a Hindu Undivided Family was not likely to be accepted. Mr. Gupta claimed that the order passed by assessing officer is bad in law. Is such claim correct?

### Solution

While dealing with the similar facts in case of **CIT Vs. Suresh Chandra Gupta 173 ITR 407**, the Rajasthan High Court held as under:

“It is a basic requirement of law that a person, who is likely to be adversely affected by an order, should have an opportunity to show cause why such adverse order should not be made.”

Considering the above, the order passed by the assessing officer is in violation of principle of natural justice. Therefore, Mr. Gupta rightly claimed that such order of assessing officer is bad in law.

### Readers Note:

## 21. | CONCEPT – SPEAKING ORDER

- The order of the Assessing officer shall be in writing.
  
- Further, it shall
  - 1) State the points for determination,
  - 2) the decision thereon and
  - 3) the reason for the decision.
  
- While passing the order under section 144 (best judgment assessment) of the Act, following points merit consideration:
  - (a) The officer must not act vindictively or capriciously or with a view to punish the assessee for non-compliance.
  
  - (b) He must make what he honestly believes to be a fair estimate of the proper figure of assessment and for this purpose he must take into consideration local knowledge and repute in regard to the assessee's circumstances, and his own knowledge of previous returns and assessments of the assessee, and all other matters which he thinks will assist him in arriving at a fair and proper estimate. (In short, Assessing Officer, while making a best judgment assessment should make an intelligent well-grounded estimate. Such estimate must be based on adequate and relevant material.)
  
  - (c) There must necessarily be guess-work in the matter but it must be honest guess-work. Further, it is not required that figures have to be proved of the exact amount by taxing authorities.

## 22. CONCEPT – PRINCIPLE OF RES JUDICATA AND ITS EXCEPTION

- **Principle of 'res judicata'**

The principle of “res judicata” has no application to proceedings under the Income-tax Act. That means, the findings reached for one particular assessment year cannot be held to be binding in the assessment proceedings for subsequent years.

### **Example 1**

X Ltd. has claimed the deduction under section 80-IE for the previous year 2011-12 for the first time. Thereafter, the assessing officer assessed the income under section 143(3) accepting the claim under section 80-IE.

Since principle of ‘res judicata’ has no application to the proceedings under the Income-tax Act, the assessing officer can reject the claim of deduction under section 80-IE for the subsequent year(s) (e.g. P.Y. 2012-13).

- **Exception to this rule:** (Popularly known as Estoppel as to Facts)

This principle remains valid (that means, the assessing officer is bound to follow the findings reached in earlier year while assessing the income of subsequent year (s)) provided in a subsequent year no fresh facts are found.

### **Example 2**

Continuing above example, discuss the impact of principle of res judicata under following alternatives for the P.Y. 2012-13 (Subsequent year).

**Alternative- I :** During the course of survey conducted at the business premises of Jay Ambe Machinery Private Ltd., the assessing officer found that the all the plant & machinery purchased during previous year 2011-12 were not new as claimed by X Ltd.

**Alternative-II** : No such fresh facts were found by the assessing officer in this regard.

### **Impact under different alternatives**

#### **Alternative – I**

Since fresh facts were found later on that the machinery purchased were not new, the assessing officer is entitled to deny the deduction under section 80 IE for the subsequent assessment year (s).

Further, the assessing officer is empowered to re-open the assessment of P.Y. 2011-12 under section 147 to withdraw the claim of 80 IE which was already granted.

#### **Alternative- II**

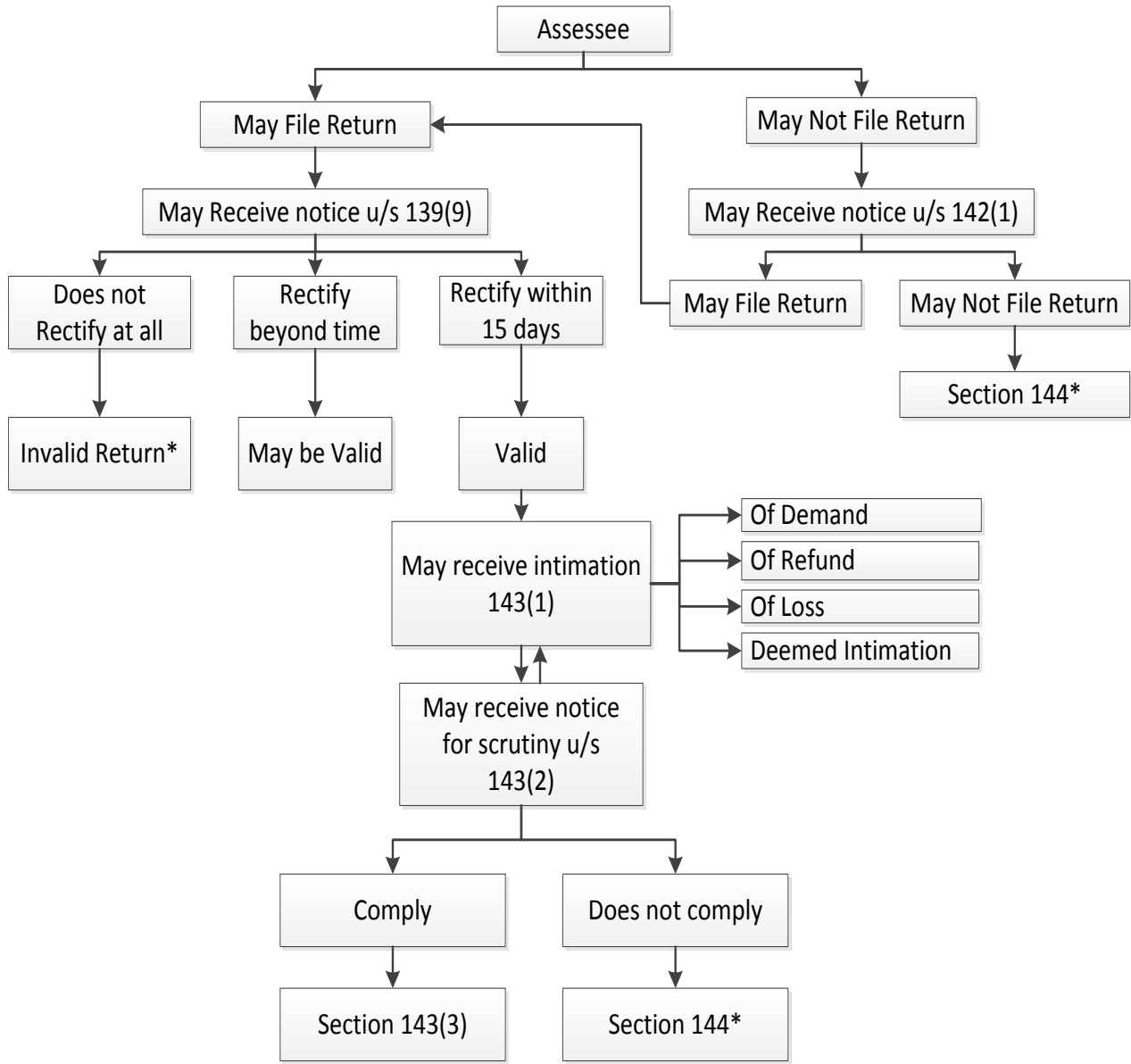
In this case, no fresh facts were found, therefore, the assessing officer is bound to follow the findings reached for earlier year in relation to deduction under section 80 IE. As a result, the assessing officer is bound to approve the claim of deduction under section 80 IE for the previous year 2012-13 as well.

- **Estoppel as to Statute:**

Madras High Court in case of **C.G. Krishnaswami Naidu v. CIT [1975] 1100 ITR 33 held as under:** It is well-settled that there cannot be any estoppel against a statute.

As a result, departmental officers who took a particular view of the statutory provisions at an earlier stage will not be estopped from taking a different / correct view of the statutory provisions at a later point of time.

**Summary Chart of Assessment Procedure**



Section 144\*

Not complied with 143(2)	Not complied with 142(1)	Method of accounting-145
Failed to file return 139	Direction of Audit- 142(2A)	

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