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## **ADVANCED COURSE ON INCOME TAX ASSESSMENT AND APPEALS** **(ACIAA)**

### **Today's Content – Notice of Demand and Rectification of Mistake**

#### **1. Concept of Notice of Demand under the Income-tax Act**

A **Notice of Demand** is a statutory communication issued by the Income Tax Department to an assessee when any **sum becomes payable** under the provisions of the Income-tax Act, 1961. Such notice is issued under **Section 156** of the Act and serves as an official intimation that tax, interest, fee, penalty, or any other sum determined by the Department is outstanding and payable by the assessee.

The notice specifies:

- The **assessment year** to which the demand relates
- The **amount payable or refundable**
- The **break-up** of tax, interest, fee, or penalty
- The **time limit** within which payment is required to be made

Ordinarily, the assessee is required to pay the demanded amount within **30 days** from the date of service of the notice, failing which the assessee may be treated as an **assessee in default**, exposing him to recovery proceedings.

## 2. Circumstances Leading to Issue of Notice of Demand

A notice of demand may arise at various stages of assessment or processing. In modern practice, most demands are generated through **centralised processing by CPC** under section **143(1)**.

Common circumstances include:

- Non-grant or partial grant of **TDS credit**
- Mismatch between return data and **Form 26AS / AIS**
- Arithmetical errors in tax computation
- Incorrect levy of interest under sections 234A, 234B, or 234C
- Non-grant of rebate under section 87A
- Incorrect levy of late fee under section 234F
- System-driven disallowance of deductions

It is important to note that a notice of demand **does not automatically mean concealment or wrongdoing** by the assessee. In many cases, the demand is a result of **clerical, technical, or computational errors**.

## 3. Legal Provision for Rectification – Section 154

### 3.1 Meaning and Scope

**Section 154** empowers the Income Tax Authorities to **rectify any mistake apparent from the record**. This power can be exercised:

- **Suo moto** by the authority, or
- **On an application made by the assessee**

The provision ensures that obvious and undisputed errors can be corrected **without resorting to lengthy appellate proceedings**, thereby promoting administrative efficiency and fairness.

## 4. Meaning of “Mistake Apparent from the Record”

The phrase *“mistake apparent from the record”* is central to section 154 and has been the subject of judicial interpretation.

A mistake is said to be apparent from the record if:

- It is **obvious and patent**
- It does not require **long-drawn reasoning**

- It can be identified merely by **looking at the existing record**

Examples of mistakes apparent from record include:

- Mathematical or arithmetical errors
- Incorrect totals or carry forwards
- TDS credit not allowed despite appearing in Form 26AS
- Incorrect application of tax rates
- Wrong computation of interest or late fee

On the other hand, issues involving:

- **Interpretation of la0077**
- **Change of opinion**
- **Debatable legal issues**
- **Introduction of new facts or claims**

## 5. Time Limit for Rectification

Rectification under section 154 may be carried out **within four years** from the end of the financial year in which the order sought to be rectified was passed.

This limitation applies equally to:

- Rectification initiated by the department, and
- Rectification requested by the assessee

## 6. E-Process for Responding to Notice and Filing Rectification

With the digitisation of tax administration, the rectification process has been made **entirely electronic**, ensuring transparency and traceability.

### 6.1 Filing Rectification Online

The assessee must log in to the **Income Tax e-Filing Portal** and submit a rectification request under the relevant assessment year and order (generally intimation u/s 143(1)).

The assessee is required to:

- Identify the **nature of mistake**
- Choose the **appropriate rectification category**
- Upload relevant supporting documents
- Submit and **verify** the request electronically

Failure to verify the rectification request renders it **invalid and non-est**.

## 7. Types of Rectification Requests

Rectification requests generally fall into the following categories:

### 7.1 Rectification of Return Data

This includes correction of:

- Income figures already disclosed
- Deductions already claimed
- Tax computation errors

However, **fresh claims or new deductions** not part of the original return are **not permissible**.

### 7.2 Rectification of Tax Credit Mismatch

This is the most common category and involves:

- TDS not allowed or partially allowed
- Advance tax not reflected
- Self-assessment tax not credited

Supporting documents such as Form 26AS and challans are essential.

### 7.3 Rectification of Interest or Fee

Rectification may be sought for:

- Excess interest charged under sections 234A/B/C
- Wrong levy of late fee under section 234F
- Non-grant of rebate under section 87A

## 8. Drafting of Rectification Application – Detailed Discussion

Although rectification is filed electronically, **clear drafting remains critical**, especially when the matter is reviewed by CPC or jurisdictional Assessing Officer.

A well-drafted rectification application should:

- Clearly state the **facts of the case**
- Identify the **exact mistake**
- Establish that the mistake is **apparent from record**
- Refer to **section 154**
- Contain a precise and limited **prayer**

Clarity and brevity are essential, as vague or argumentative drafting may lead to rejection.

## 9. Disposal of Rectification Application

Upon submission, the rectification request is examined by CPC or the Assessing Officer.

The authority may:

- Accept the rectification in full
- Partially allow the request
- Reject the request with reasons

If rectification results in modification of tax liability, a **fresh intimation or order** is issued.

## 10. Remedy in Case of Rejection

If a rectification application is:

- Rejected wrongly, or
- Not disposed of within reasonable time

The assessee may:

- File a **grievance** on the portal, or
- Prefer an **appeal under section 246A**, where the issue involves appealable matters

## 11. Rectification vs Appeal – Conceptual Difference

Rectification is a **corrective mechanism**, whereas appeal is an **adjudicatory remedy**.

Rectification is appropriate only where:

- Error is clear and undisputed

Appeal is necessary where:

- Legal interpretation or factual appreciation is involved

**Understanding section 154 is crucial because:**

- Most demands today arise from **automated processing**
- Rectification is **faster and cost-effective**
- It avoids unnecessary litigation
- It reflects the principle of **natural justice**

**Genesis of Conflict between FAO and JAO**

The conflict primarily arises due to:

- **Overlap of statutory powers**
- **Lack of clear demarcation** between assessment and post-assessment functions
- Transitional issues during implementation of faceless schemes

In several cases, both FAO and JAO claim authority over the same matter, leading to uncertainty for taxpayers.

## **12. Areas of Conflict between FAO and JAO**

### **Conflict in Rectification Proceedings (Section 154)**

One of the most common conflicts arises in **rectification of assessment orders** passed under the faceless scheme.

- The FAO passes an assessment order u/s 143(3) read with faceless provisions.
- The assessee files a rectification application u/s 154.
- The JAO may claim jurisdiction on the ground that rectification is a post-assessment function.
- The FAO or CPC may assert that since the original order was faceless, rectification must also be handled facelessly.

This results in:

- Rectification applications remaining unattended
- Jurisdictional confusion
- Delay in disposal

## **Conflict in Demand Management and Recovery**

Another major conflict relates to **recovery of tax demand**.

- FAO raises demand through assessment order.
- JAO is responsible for recovery proceedings.
- Assessee approaches JAO for stay of demand.
- JAO often declines jurisdiction, stating that the assessment was passed by FAO.
- FAO, on the other hand, lacks recovery powers.

This creates a **jurisdictional vacuum**, prejudicing the assessee.

## **Conflict in Giving Effect to Appellate Orders**

After an appellate authority (CIT(A), ITAT, or Court) passes an order:

- JAO is generally responsible for giving effect.
- However, where the original assessment was passed by FAO, ambiguity arises regarding:
  - Who should pass the giving-effect order?
  - Who should recompute demand or refund?

This has led to delays in implementation of appellate relief.

## **Conflict in Penalty Proceedings**

Penalty proceedings often originate from assessment findings.

- FAO initiates penalty during assessment.
- JAO is required to complete penalty proceedings.
- Disputes arise as to:
  - Whether penalty proceedings should be faceless
  - Whether JAO can independently apply mind if assessment was faceless

## **Conflict in Reassessment Proceedings**

In reassessment cases:

- FAO may conduct reassessment proceedings

- JAO may still retain jurisdiction over records and recovery
- Assesseees face confusion regarding whom to approach for:
  - Clarifications
  - Rectifications
  - Recovery relief

### 13. Legal Position and CBDT Clarifications

The CBDT has issued several instructions clarifying that:

- **Assessment functions** are to be performed by FAO under faceless schemes
- **Administrative and recovery functions** generally lie with the JAO
- Rectification, demand recovery, and giving effect to appellate orders may be handled by JAO unless specifically assigned facelessly

However, absence of **statutory amendments clearly defining jurisdiction** continues to fuel disputes.

### 14. Judicial Approach to FAO-JAO Conflict

Courts have consistently emphasised that:

- Taxpayers should not suffer due to **internal administrative arrangements**
- Department must internally resolve jurisdictional conflicts
- Remedies cannot be denied merely on the ground of jurisdictional ambiguity

Judicial trend favours **substance over form**, ensuring taxpayer rights are protected.

