

Best judgment assessment
U/s 144 and it's reference
to the dispute resolution
panel constituted U/s
144C

- The integral part of the Indian taxation system, ensuring that taxpayers contribute their share of tax and fulfil necessary obligations.
- Section 144 of the Income Tax Act 1961 deals with the assessment of a taxpayer that is carried out by the Assessing Officer (AO) as per his best judgment and based on all relevant information gathered. Such assessments are generally done in cases where any taxpayer fails to comply with the requirements of other Provisions of the Act, and will be discussed in detail.
- In cases where a taxpayer fails to file his/her income tax return, Section 144 of the Income Tax Act allows Assessing Officers to assess tax liability by following the Best judgment assessment process.

- Objects- Sec 144 – best judgment assessment
- If an assessee or any representative assessee
- (a) fails to make the return required [2][under sub-section (1) of section 139] and has not made a return or a revised return under sub-section (4) or sub-section (5) [3][or an updated return under sub-section (8A)] of that section, or
- (b) fails to comply with all the terms of a notice issued under sub-section (1) of section 142 [4][or fails to comply with a direction issued under sub-section (2A) of that section], or
- (c) having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 143,
- the Assessing] Officer, after taking into account all relevant material which the Assessing] Officer has gathered, shall, after giving the assessee an opportunity of being heard, make the assessment] of the total income or loss to the best of his judgment and determine the sum payable by the assessee [8][* * * *] on the basis of such assessment :

- [9][Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment :
- Provided further that it shall not be necessary to give such opportunity in a case where a notice under sub-section (1) of section 142 has been issued prior to the making of an assessment under this section.
- The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.

Opportunity must be given to the assessee before making Best Judgment Assessment :

- The best judgment assessment can only be made after giving the assessee an opportunity of being heard by giving notice to the assessee to show cause why the assessment should not be completed under section 144. However, it will not be necessary to give such notice where a notice under section 142(1) has already been issued prior to making assessment under this section.

Best Judgment Assessment on Rejection of Accounts

- Section 145(3) empowers the Assessing Officer to reject the account books which are unreliable, false or incorrect or incomplete. The Assessing Officer can reject the books of account on the following grounds and may make the assessment in the manner provided in section 144:
 - He is not satisfied about the correctness or completeness of the accounts of the assessee,
 - Although the accounts of the assessee are correct and complete to the satisfaction of the Assessing Officer but the method of accounting employed is such that, in the opinion of the Assessing Officer, profits cannot be correctly arrived therefrom,

- Where the method of accounting adopted by the assessee has not been regularly followed by him, or
- Where income has not been computed in accordance with the standards notified under section 145(2)"
- This process begins when any taxpayer fails to provide accurate and complete information. In the case of assessing tax, if a taxpayer fails to file an IT return or provide required documents, tax authorities might initiate the best judgment assessment based on the information available.

POWER OF THE ASSESSING OFFICER

- 1. VERIFICATION OF RETURN
- 2. CALL FOR THE ASSESSEE FOR PRODUCTION OF DOCUMENTS WITH EVIDENCES THEREOF U/S 142(1)/143(2)
- 3. ENQUIRY BEFORE THE ASSESSMENT U/S 133
- 4. INVESTIGATION BEFORE THE ASSESSMENT U/S 133
- 5. ISSUANCE OF NOTICES U/S 142(1)
- 6. ISSUANCE OF SUMMONS U/S 132
- 7. INITIATION FOR PROSECUTION PRIOR TO APPROVAL
- 8. PROVISIONAL ATTACHMENT OF PROPERTY U/S 281B
- 9. PASS APPROPRIATE ORDER AS DEEM FIT U/S 143(3)/144/147/153A/153C

SCOPE OF BEST JUDGEMENT ASSESSMENT- WHETHER AUTOMATICALLY SHALL APPLY WHERE ANY OF THE ABOVE THREE CONDITION EXISTS

- *Aspect dealt in case of Mubarak Trading Co. v. CIT [2008] 174 Taxman 339 (Ker).*
- Failure of any of the conditions mentioned in clauses (a) to (c) of section 144(1) need not always lead to best judgment assessment under section 144.

- **Narration of the objects:** if an assessee fails to file return in time, but he produces entire books of account against the notice issued by the Assessing Officer, still assessment can be completed based on the book results and such assessment is certainly not a best judgment assessment under section 144. A best judgment assessment arises only when the Assessing Officer determines income based on materials gathered by him and not when assessment is made based on books of account submitted by the assessee.
- A best judgment assessment can arise even in case of income escaping assessment under section 147 because section 148 makes it clear that a return filed against notice issued under section 148 should be proceeded with as if it is a return under section 139.

- This means that in a proceeding initiated under section 147, the Assessing Officer can make a best judgment assessment if the books of account produced by the assessee are unacceptable. **Even though word 'or' is used in clauses (a) to (c) of section 144, yet a best judgment assessment is called for only when there is cumulative failure of all conditions including failure to furnish his details of income and to prove same through his accounts and documents.**

CIT Central and United Provinces v. Laxminarain Badridas [1973] 5 ITR 170 (PC)

- The Court held that Under section 23(4) of the Income-tax Act, the Officer is to make an assessment to the best of his judgment against a person who is in default. He must not act dishonestly or vindictively or capriciously because he must exercise judgment in the matter. He must make what he honestly believes to be fair estimate of the proper figure of assessment, and for this purpose he must be able to take in to consideration, local knowledge and repute.

- In regard, to the assessee's circumstances and his own knowledge of previous returns and assessments of assessee and all other matters which he thinks will assist him in arriving at a fair and proper estimate, and though there must necessarily be guesswork. In the matter, it must be honest guesswork. In that sense too, the assessment must be some extent arbitrary.

ESTIMATION OF INCOME MUST BE HONEST AND FAIR

- ***Brij Bhushan Lal Parduman Kumar v. CIT [1978] 115 ITR 524 (SC).***
- ***Kachwala Gems v. Jt. CIT [2007] 158 Taxman 71 (SC).***
- The authority making a best judgment assessment must make an honest and fair estimate of the income of the assessee and though arbitrariness cannot be avoided in such an estimate, the same must not be capricious but should have a reasonable nexus to the available material and the circumstances of the case.

REDUCTION IN GROSS PROFIT RATIO CAN NOT BE THE ONLY GROUND FOR REJECTION OF BOOKS OF ACCOUNTS FOR THE PURPOSE OF BEST JUDGMENT ASSESSMENT

- *Pr. CIT v. IBILT Technologies Ltd. (2018) 98 Taxmann.com 255 (DHC)*
- If there is fall in the gross profit ratio, reasons and grounds given by the respondent/assessee have to be examined objectively, fairly and in a non-partisan manner. Past results could be a good reason to conduct detailed verification, albeit would not be the only ground and reason to make addition by rejecting the books of account. Good and cogent reason why the financial results should be rejected has to be given. Books of account cannot be rejected as the respondent- assessee has suffered losses, where as in the immediate earlier year, profit was made.

- Reduction of gross profit ratio could be due to various reasons, and cannot be the sole and only ground to reject the book results in entirety and frame best judgment assessment
- ***CIT v. Poonam Rani [2010] 326 ITR 223/192 Taxman 167 (Delhi), Action Electricals v. Dy. CIT [2003] 132 Taxman 640/[2002] 258 ITR 188 (Delhi).***
- The reasoning given in the assessment order to compute income on hypothetical basis by applying gross profit ratio of 4% is completely fallacious, wrong and is contrary to well-settled law,
- ***CIT v. Calcutta Discount Co. Ltd. [1973] 91 ITR 8 (SC), Dhakeshwari Cotton Mills Ltd. v. CIT [1954] 26 ITR 775 (SC) and***
- ***Raghubar Mandal Harihar Mandal v. State of Bihar AIR 1957 SC 810.***

REFUSAL BY CHARTERED ACCOUNTANT UNDER SECTION 142(2A) CANNOT LEAD TO BEST JUDGMENT ASSESSMENT

- ***Swadeshi Polytex Ltd. v. ITO [1983] 144 ITR 171 (SC).***
- If, for a frivolous reason, the chartered accountant declines to undertake the audit of a company's accounts under a direction issued under section 142(2A), obviously the company could not be held responsible. There is neither default nor failure to comply with the direction issued under section 142(2A) on the part of the company so as to attract a best judgment assessment by invoking section 144(B)

- Notice under Section 142 is issued, to gather information from the taxpayer such as
 - Books of accounts or documents
 - Other information in written form as required by the assessing officer.
 - This information might include statements of assets and liabilities, which are already part of accounts.
- If the assessee has not filed Income Tax Returns, this notice can be issued, requiring the assessee to file the returns within the specified time limit.
- Therefore it can be issued irrespective of whether the assessee has filed the income tax returns or not.
- If the Assessing Officer is satisfied that the information submitted by the assessee is valid and complete, he may choose to discontinue the assessment proceedings at that stage.
- The assessee should provide the information as requested by the assessing officer even if he opines that the information is irrelevant for the assessment procedures.

- Section converted from
- 143(3)
- 148
- 153A
- 153C

TIME LIMIT FOR THE INITIATION OF THE ASSESSMENT

- Assessment years 2017-18 or before: Within 21 months from the end of the assessment year in which the income is first assessed.
- For the assessment year 2018-19: 18 months from the end of fiscal year when the income is assessable for the first time.
- For the assessment year 2019-20: Within 12 months of first assessing the income, by the end of assessment year.
- For assessment year 2020-21: Within 18 months of the end of the financial year, where income was originally assessed.
- For assessment year 2021-22: Within 9 months from the end of assessment year when income is assessable for the first time.
- For assessment year 2022-23 onwards: 12 months from the end of fiscal year where income was originally assessed.

DISPUTE RESOLUTION PANEL U/S 144C

- An alternate dispute resolution mechanism to facilitate expeditious resolution of disputes in tax related matters for foreign companies and for transfer pricing matters by virtue of Section 144C(15)(C).
- Rule 3(3) of DRP Rules 2009 Further, the Central Board of Direct Taxes (CBDT) has also notified the Rules, viz., Income-tax (Dispute Resolution Panel) Rules, 2009 for establishing the Dispute Resolution Panels (DRP) and the framework for the proceeding
- [vide Notification S.O. No. 2958(E)/2009/ F.No.142/22/2009-TPL].

- Also, the same was integrated in Faceless Scheme by CBDT vide notification no 6 & 7 of 2021 dated 17th February 2021 which provides an option for eligible assessee to approach the DRP after passing of draft assessment order under Faceless Scheme.
- The eligible assessee may file objections before Dispute Resolution Panel against draft assessment order passed by the Assessing Officer within 30 days of receipt of draft assessment order.
- **Procedures**
- Rule-4 (Income-tax (Dispute Resolution Panel) Rules, 2009), the objections may be filed in person or through his agent within the specified period in Form No. 35A. The sample of form 35A is given in Rule-Forms.

- Further, the objections shall be filed in paper book form in quadruplicate duly accompanied by— four copies of the draft order duly authenticated by the eligible assessee or his authorised representative:
- Provided that in the case of draft assessment under sub-section (3) of section 143 read with section 144A, the objections shall also be accompanied by four copies of the directions issued by the Joint Commissioner or Additional Commissioner under section 144A and in the case of draft assessment under sub-section (3) of section 143 read with section 147, the objections shall also be accompanied by four copies of the original assessment order, if any :
- Provided further that the Panel may, in its discretion, either accept the objections which are not accompanied by all or any of the documents referred to above or reject it.

- the evidence, if any, the eligible assessee intends to rely upon including any document or statement or paper submitted to the Assessing Officer :
- Provided that where the eligible assessee intends to rely upon any additional evidence other than those submitted to the Assessing Officer, such additional evidence shall not form part of the paper book but may be filed along with a separate application stating the reasons for filing such additional evidence.

- section 144C(15)(b) of the Income Tax Act, 1961, “eligible assessee” means:
 - 1. any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and
 - 2. any non-resident not being a company, or any foreign company.
- The form needs to be duly signed by the assessee or authorized representative.
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- Hearing of objections: The panel may hold its sittings at headquarter or such other place it may deem proper. Authorization letter before the commencement of the hearing need to be filed if authorized representative appears on behalf of eligible assessee. The panel may consider the application for filing additional affidavit and may either allow such application or reject it. And, the eligible assessee may, with the permission of the panel, urge any additional ground which has not been set forth in the objections.
- Time limit for completion of assessment:
- No direction shall be issued by the DRP after nine months from the end of the month in which the draft order is forwarded to the eligible assessee. After the receipt of the directions of the DRP, AO shall pass final assessment order within one month from the end of the month in which such direction is received.
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E-Assessment scheme:

- Under the existing Faceless Scheme, there was ambiguity as to whether cases where the option to approach DRP is available are covered within the scope of Faceless Scheme in the absence of any mechanism under the Faceless Scheme to approach the DRP. The CBDT vide notification no 6 & 7 of 2021 dated 17th February 2021 amended the Faceless Assessment Scheme, 2019 and integrated faceless assessment proceedings under Faceless Scheme with DRP proceedings.
- The revised procedure in Faceless Scheme provides an option for eligible taxpayers to approach the DRP after passing of draft assessment order under Faceless Scheme. In such cases, a step-wise procedure is provided for granting an opportunity to eligible taxpayers to file objections before the DRP and to pass final assessment order in a faceless manner through National Faceless Assessment Centre post completion of the proceedings before the DRP in conformity with the directions of the DRP.

Information or Documents required to be submitted with Form 35A

- As per Rule-Forms (Income-tax (Dispute Resolution Panel) Rules, 2009), Following documents shall be furnished along with Form 35A in the prescribed order:
 - 1. Ground of objection
 - 2. Facts as submitted to Assessing Officer
 - 3. Facts, if any, modified by the Assessing Officer
 - 4. Do you wholly agree with the modifications in the facts by the Assessing Officer. If not, give reasons pointing the specific fact or facts with which you do not agree along with the reasons and documentary evidence, if any

- 5. Legal arguments submitted to Assessing Officer
- 6. Case laws relied upon by the assessee
- 7. Legal argument relied upon by the Assessing Officer
- 8. Case laws relied upon by Assessing Officer
- 9. Any additional new case laws which the assessee may like to rely upon
- 10. Factual and legal arguments against the addition proposed by the Assessing Officer

Thank you