



Best Judgement Assessment u/s 144 & DRP



*“Behind Every Successful Business Decision, there is always a **CMA**”*



The Institute of Cost Accountants of India
(Statutory body under an Act of Parliament)
Tax Research Department

Online Certificate Course to AICAA – 6th Batch

Introduction to Assessments

- ❖ Every taxpayer has to furnish the details of his income to the Income-tax Department.
- ❖ These details are to be furnished by filing up his return of income.
- ❖ Once the return of income is filed up by the taxpayer, the next step is the processing of the return of income by the Income Tax Department.
- ❖ The Income Tax Department examines the return of income for its correctness.
- ❖ The process of examining the return of income by the Income Tax department is called as “Assessment”.
- ❖ Assessment also includes re-assessment and **best judgment assessment** u/s 144.

Introduction to Assessments

Under the Income-tax Law, there are four major assessments given below:

- ❖ Assessment under section 143(1), i.e., Summary assessment without calling the assessee.
- ❖ Assessment under section 143(3), i.e., Scrutiny assessment.
- ❖ Assessment under section 144, i.e., Best judgment assessment.
- ❖ Assessment under section 147, i.e., Income escaping assessment.

Meaning of Best Judgement Assessment

- A best judgement assessment is an income tax assessment which is performed by the assessing officer with limited knowledge about the financial circumstances of the assessee.
- Assessee may fail to give the assessing officer adequate co-operation regarding the assessment procedure.
- AO's the highest quality, or being the most suitable
- the ability to form valuable opinions and make

Introduction to Section 144

- ✓ Assessment under section 144 is known as best judgment assessment.
- ✓ This is an assessment carried out as per the best judgment of the Assessing Officer.
- ✓ This assessment is carried out in a case where the taxpayer fails to comply with the requirements specified in section 144

Scope of assessment under section 144

- ❑ As per section 144, the Assessing Officer is under an obligation to make an assessment to the best of his judgment in the following cases:-

If the taxpayer **fails to file** the return required **within the due date** prescribed

- ✓ under section 139(1) or
- ✓ a belated return under section 139(4) or
- ✓ a revised return under section 139(5), or
- ✓ an updated return under section 139(8A).

Concept of Updated Return u/s 139(8A)

Late Fee, Additional Tax u/s 140B & Last Date to File Updated Return					
Taxation Updates					
A.Y.	Late Fee If Total Income		Additional Tax u/s 140B		Last Date to File ITR
	up to Rs.5 Lakh	above Rs.5 Lakh	25%	50%	
A.Y.2020-21 (F.Y.2019-20)	1,000.00	10,000.00	No Option	From 01/04/2022 to 31/03/2023	31/03/2023
A.Y.2021-22 (F.Y.2020-21)	1,000.00	5,000.00	From 01/04/2022 to 31/03/2023	From 01/04/2023 to 31/03/2024	31/03/2024
A.Y.2022-23 (F.Y.2021-22)	1,000.00	5,000.00	From 01/01/2023 to 31/03/2024	From 01/04/2024 to 31/03/2025	31/03/2025

Concept of Updated Return u/s 139(8A)

139(8A) updated return > with in 12m form the end of RAY		After 12m upto 24m
If Tax Liability	Additional Tax @ 25%	Additional Tax @ 50%
10000	12500	15000
Interest	Yes	Yes
Late Fees u/s 234F	TI upto 5 Lakh : Rs 1,000	TI > 5 Lakh : Rs 5,000
AY 2020-21	31-03-2021 12M 31-03-2022	31-03-2021 24M 31-03-2023
AY 2021-22	31-03-2023	31-03-2024
AY 2022-23	31-03-2024	31-03-2025 >>> 9M 31-12-2025

Scope of S.144

- ❑ If the taxpayer fails to comply with all the terms of a notice issued u/s 142(1).
 - ✓ The Assessing Officer can issue notice under section 142(1) asking the taxpayer to file the return of income
 - ✓ if he has not filed the return of income or
 - ✓ to produce or cause to be produced such accounts or
 - ✓ documents as he may require and to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including a statement of all assets and liabilities of the taxpayer, whether included in the accounts or not) as he may require.

Scope of S.144

- ❑ If the taxpayer fails to comply with the directions issued under section 142(2A).
- ✓ Section 142(2A) deals with special audit.
- ✓ As per section 142(2A), if the conditions justifying special audit as given in section 142(2A) are satisfied,
- ✓ then the Assessing Officer will direct the taxpayer to get his accounts audited from a chartered accountant nominated by the principal chief commissioner or Chief Commissioner or Principal Commissioner or Commissioner and to furnish a report of such audit in the prescribed form.

Scope of S.144

- ❑ If after filing the return of income the taxpayer fails to comply with all the terms of a notice issued under section 143(2), i.e., notice of scrutiny assessment.
- ❑ If the assessing officer is not satisfied about the correctness or the completeness of the accounts of the taxpayer or if no method of accounting has been regularly employed by the taxpayer.

Comment:

So, it can be observed that best judgment assessment is resorted to in cases where

- ✓ the return of income is not filed by the taxpayer or
- ✓ if there is no cooperation by the taxpayer in terms of furnishing information / explanation related to his tax assessment or
- ✓ if books of accounts of taxpayer are not reliable or are incomplete.

Procedure of Assessment under section 144

- ❖ If the conditions given above calling for best judgment are satisfied, then the Assessing Officer will serve a notice on the taxpayer to show cause why the assessment should not be completed to the best of his judgment.
- ❖ No notice as given above is required in a case where a notice under section 142(1) has been issued prior to the making of an assessment under section 144.
- ❖ If the Assessing Officer is not satisfied by the arguments of the taxpayer and he has reason to believe that the case demands a best judgment, then he will proceed to carry out the assessment to the best of his knowledge.

Procedure of Assessment under section 144

If the criteria of the best judgment assessment are satisfied,

- ✓ then after taking into account all relevant materials which the Assessing Officer has gathered, and
- ✓ after giving the taxpayer an opportunity of being heard (OBH),
- ✓ the Assessing Officer shall make the assessment of the total income or loss to the best of his knowledge/judgment and
- ✓ determine the sum payable by the taxpayer on the basis of such assessment.

Time-Limit u/s 144

As per Section 153, the time limit for making assessment under section 144 is:-

- 1) Within 21 months from the end of the assessment year in which the income was first assessable. [For assessment year 2017-18 or before]

- 2) 18 months from the end of the assessment year in which the income was first assessable.
[for assessment year 2018-19]

- 3) Within 12 months from end of the assessment year in which income was first assessable.
[Applicable for assessment year 2019-20]

- 4) Within 18 months from end of the assessment year in which income was first assessable
[Applicable for assessment year 2020-21]

- 5) Within 9 months from end of the assessment year in which income was first assessable. [Applicable for assessment year 2021-22 and onwards]

Time-Limit u/s 144

Notes:

- ❑ If reference is made to TPO, the period available for assessment shall be extended by 12 months.

- ❑ If return has been furnished under section 139(8A), the order of assessment shall be passed within 9 months from the end of financial year in which such return was furnished.

Notes:

- Can best Judgement assessment only be made?
 - The best judgement assessment can be made only after giving the assessee an opportunity of being heard giving notice to the assessee to show cause, why the assessment should not be completed under Section 144 of the Income Tax Act, 1961.
- What is the conclusion of best judgement assessment?
 - Conclusion. A general understanding of the procedure shows that the best judgment assessment procedure has given wide discretionary powers to the assessing authority to assess in the instances where there has been wilful suppression and concealment of income and turnover by the assessee.
- What are the remedies of best Judgement assessment?
 - Upon receiving best judgment assessment an assessee can file an appeal under Section 246A of the Act or can file a revision under Section 264 of the Act before the Income Tax Commissioner. An assessee gets an opportunity of being heard before the best judgment assessment is made.

Sec 144C: Reference to Dispute Resolution Panel (DRP)

1. The A.O. while making assessment is bound to follow procedure of forwarding draft order in the following cases :

- a) Foreign Co. or Non - Resident in whose case A.O. wants to make variation which is prejudicial to assessee.**
- b) Other Assessee in whose case variation in total income arises on account of order of TPO passed under Sec 92CA.**

2. A.O. shall forward a copy of draft order to the Assessee.

3. Within 30 days from the date of receipt of draft order, the assessee shall -

- a) File his acceptance to A.O., or**
- b) File his objections to A.O. & DRP.**

4. If assessee files his acceptance then A.O shall pass the final order within one month from the end of the month in which acceptance is received by A.O.

5. If the assessee files objection then DRP shall issue direction with 9 months from the end of the month in which draft order is forwarded to Assessee.

6. DRP shall issue Direction on the basis of Draft order, objection of assessee, material gathered by DRP, evidence produced by Assessee.

7. After receiving direction, the A.O shall pass the final order within one month from end of the month in which directions are received by A.O.

8. DRP directions are received by A.O are binding on A.O.

DRP

9. **DRP may confirm, reduce or enhance the variation purposed in the draft order.**
10. **If Assessee is not satisfied with Final order passed by A.O. in pursuance of direction of DRP, he can file an appeal to ITAT (Appellate Tribunal). (Dept can't challenge direction of DRP)**
11. **(i) The CG may make a scheme, by notification in the Official Gazette, for the purposes of issuance of directions by the DRP, so as to impart greater efficiency, transparency and accountability by—**
 - (a) eliminating the interface between the DRP and the eligible assessee or any other person to the extent technologically feasible;
 - (b) optimising utilisation of the resources through economies of scale and functional specialisation;
 - (c) introducing a mechanism with dynamic jurisdiction for issuance of directions by DRP.**(ii) The CG may, for the purpose of giving effect to the scheme made, by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification: Provided that no direction shall be issued after the 31/03/22.**
(iii) Every notification issued under this section shall, as soon as may be after the notification is issued, be laid before each House of Parliament.
(Added by The Taxation and Other Laws (Relaxation & Amendment of certain provisions) Act, 2020 w.e.f. 01/11/20)



QUESTION ANSWER RELATIONSHIP

CedarBridge Academy, February 2009

*{Arise, awake and stop not until the goal is reached}
- Swami Vivekananda*



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