Best Judgement Assessment u/s 144 - covering filing of objection before Dispute Resolution panel

**Section 144 of Income Tax Act: Best Judgement Assessment**

Tax assessment is an integral part of Indian taxation system, ensuring that taxpayers contribute their share of tax and fulfil necessary obligations. In cases where a taxpayer fails to file his/her income tax return, Section 144 of Income Tax Act allows Assessing Officers to assess tax liability by following the Best Judgement Assessment process.

In this article, we will guide you with all the necessary details regarding Section 144 and how the AO offers his best judgement assessment based on your circumstances.

**What Is Section 144 Of Income Tax Act?**

Section 144 of Income Tax Act 1961 deals with the assessment of a taxpayer that is carried out by the Assessing Officer (AO) as per his best judgement and based on all relevant information gathered. Such assessments are generally done in cases where any taxpayer fails to comply with the requirements of Section 144.

**Best Judgement Assessment in Income Tax**

As per the Income Tax Act, a best judgement assessment signifies the assessment performed by an assessing officer with specific knowledge of an assessee’s financial circumstance. If a taxpayer is unable to produce necessary documents or fails to file tax returns, the taxation authorities might initiate a best judgement assessment to understand his/her tax liability.

There are certain conditions that the assessing officer considers before applying the best judgement assessment. It helps to ensure the judgement is fair, unbiased and accurate. Some of them are:

* **Documentation**

The authorities need to maintain proper documents for the process of best judgement assessment. It involves any efforts made to gather information, record reasons to initiate such assessment, examination criteria and final decision.

* **Lack of information**

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 judgement assessment as per information available.

* **Objective criteria**

This process is based on the objective criteria of the assessment rather than personal biases or opinions. The assessing officer (AO) needs to consider relevant precedents, laws, principles and regulations during the assessment process.

**Best Judgement Assessment Under Section 144**

The assessing officer initiates best judgement assessment under Section 144 of Income Tax Act. AO will apply best of judgement assessment for the following reasons:

* If any taxpayer is unable to file an IT return within the prescribed due date under Section 139(1) or any belated return as per Section 139(4) or any revised return as per Section 1395(5), or an updated return under Section 139(8A),
* If any taxpayer fails to comply with all the terms of a notice issued as per Section 142(1),
* If a taxpayer fails to comply with all the directions mentioned under Section 142(2A)
* If any AO is not satisfied with completeness or accuracy of a taxpayer's accounts, or if a taxpayer has not used a consistent accounting procedure.
* After filing an IT return, if a taxpayer fails to comply with all the terms of a notice issued as per Section 143(2), that is, a notice of scrutiny assessment.

**Notice Under Section 144 Of Income Tax Act**

As per the above-discussed criteria, best judgement assessment gets resorted to cases where a taxpayer does not file an IT return or the taxpayer does not cooperate to furnish an explanation or information related to his/her tax assessment.

However, the assessing officer issues notice to the taxpayer before implementing such a judgement.

* The AO can issue notices as per Section 142(1) by asking the taxpayer to file an income tax return if he still hasn't filed the same.
* The officer could also ask the taxpayer to produce required documents or accounts as required and furnish the same in writing and verify in the prescribed way on such matters or points as needed.

**DISPUTE RESOLUTION PANEL UNDER INCOME TAX ACT 1961**

The Dispute Resolution Panel (DRP) under the Income Tax Act, 1961 is an Alternative Dispute Resolution (ADR) mechanism for resolving the disputes relating to Transfer Pricing in International Transactions. Section 144C of Income Tax Act governs the provisions relating to DRP and defines DRP as a collegium comprising of three Commissioners of Income-tax constituted by the Board [Central Board of Direct Taxes] for this purpose. Section 144C comes into picture when the Assessing Officer (AO) under the Act proposes to make, any variation in the income or loss stated in the return filed by the assessee and such variation is prejudicial to the interest of the assessee and the AO forwards a draft of the proposed Assessment order to the assessee in order to invite his acceptance or objections to the same. Assessee under section 144C refers to a Foreign Company and any person in  whose case  AO proposes  to make  any variation in the income or loss stated in the return filed by such person, as a consequence of the order passed by the Transfer Pricing Officer under Sub Section (3) of Section 92CA..

Section 144C was inserted in the ITA by the Finance Act, 2009 and came into effect from 1st October, 2009. In the Notes on Clauses to the Finance Bill, 2009 [Budget 2009-2010] the reason for insertion of Section 144C was given as under

*“The subjects of transfer pricing audit and the taxation* *of foreign company are at nascent stage in India. Often the Assessing Officers and Transfer Pricing Officers tend* *to take a conservative view. The correction of such view* *take very long time with the existing appellate structure.*

*With a view to provide speedy disposal, it is proposed to amend the Income-tax Act so as to create an alternative* *dispute resolution mechanism within the income-tax department and accordingly, section 144C has been* *proposed to be inserted so as to provide inter alia the Dispute Resolution Panel as an alternative dispute* *resolution  mechanism.”*

Prior to the formation of DRP the assessee had to approach the Commissioner of Income Tax Appeal CIT (A) against the Assessment Order if the assessee wanted to raise objections against the Assessment Order.

However, after the formation of DRP the assessee has an additional option to approach DRP on the basis Draft Order issued by AO. The Draft Order can be acceptable or unacceptable to the Assessee. In case the variations made in the draft order are acceptable to the assessee he can file his acceptance to the Draft Order with the AO within thirty days of the receipt of the Draft Order. If no acceptance is filed within thirty Days the AO completes the assessment on the basis of the Draft Order and passes the assessment order, within one month from the end of the month, in which, the acceptance is received or the period of filing of objections expires.

In case the assessee wants to file the Objections against the variations made by the AO the assesse may file its objections with the DRP and AO.

(vi) Where the **assessment** is based on proper material and pertains to the "statutory period", the Special Court may not reduce the tax claimed and pay it out in full, but if the **assessment** is a "**best** **judgment**" **assessment**, the Special Court may examine whether the taxes so assessed are grossly disproportionate to the properties of the assessee in the hands of the Custodian, applying the Wednesbury Principle of Proportionality and other issues of the said nature. The Special Court may in these cases, scale down the tax liability to be paid out of the funds in the hands of the Custodian. Such scaling down, however, should be done only in serious cases of miscarriage of justice, fraud or collusion, or where tax assessed is so disproportionately high in relation to the funds in the hands of the Custodian as to require scaling down in the interest of the claims of the banks and financial institutions and to further the purpose of the Act. The Special Court must have strong reasons for doing so.