

Demand of Income Tax and Rectification of Mistake under Income Tax Act

By

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DEMAND

RECTIFICATION



7.1 DEMAND NOTICE [Sec. 156] & PROVISIONS RELATING THERETO [See. 220]

On completion of assessment (or intimation generated after processing of TDS statement), a demand notice [in Form 7] is served for additional demand raised in the assessment.

Time limit for payment of tax: The assessee should make the payment of amount demanded within 30 days of service of notice [Sec. 220(1)] Where the Assessing Officer has any reason to believe that it will be detrimental to revenue if the full period of 30 days is allowed, then 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 time as may be specified by him in the notice.

Extension of time limit: On an application made by the assessee before the expiry of due date, the Assessing Officer may extend the time for payment or allow payment by installments, subject to such conditions as he may think fit to impose in the circumstances of the case.

Interest on delay in payment: If the payment is not made within 30 days (or time allowed in the notice), interest shall be payable @ 1% for every month (or part thereof) of the delay [Sec. 220(2)]

Demand under IT Act 1961

Taxpoint: Where interest is charged u/s 201(1A) on the amount of tax specified in the intimation issued u/s 200A(1) for any period, then, no interest shall be charged under this section on the same amount for the same period. Similarly, where interest is charged u/s 206C(7) on the amount of tax specified in the intimation issued u/s 206CB(1) for any period, then, no interest shall be charged under this section on the same amount for the same period.

Waiver or reduction of interest [Sec.220(2A)]: The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may reduce or waive the amount of interest paid or payable by an assessee u/s 220(2), if he satisfied that:

- (a) payment of such amount has caused or would cause genuine hardship to the assessee;
- (b) default in the payment of the amount on which interest has been paid or was payable under the said sub-section was due to circumstances beyond the control of the assessee; and
- (c) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

The order accepting or rejecting the application of the assessee, either in full or in part, shall be passed within a period of 12 months from the end of the month in which the application is received. No order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard.

Demand under IT Act 1961

Assessee in default [Sec.220(4)]: If the amount is not paid within the time (or extended time) at the place and to the person mentioned in the said notice the assessee shall be deemed to be in default. Further, if, in a case where payment by installments is allowed, the assessee commits default in paying any one of the installments within the time, the assessee shall be deemed to be in default as to the whole of the amount then outstanding, and the other installment or installments shall be deemed to have been due on the same date as the installment actually in default.

Demand under IT Act 1961

Exception: In the following circumstances, the assessee may not be considered as an assessee in default:

- (a) Where an assessee has presented an appeal u/s 246A, 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 in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of.
- (b) Where an assessee has been assessed in respect of income arising outside India in a country, the laws of which prohibit or restrict the remittance of money to India, the Assessing Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which, by reason of such prohibition or restriction, cannot be brought into India, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

For this purpose, income shall be deemed to have been brought into India if it has been utilised or could have been utilised for the purposes of any expenditure actually incurred by the assessee outside India or if the income, whether capitalised or not, has been brought into India in any form.

7.2 PENALTY PAYABLE WHEN TAX IN DEFAULT [Sec. 221]

When an assessee is in default or is deemed to be in default in making a payment of tax, he shall, in addition to the amount of the arrears and the amount of interest payable u/s 220(2), be liable, by way of penalty, to pay such amount as the Assessing Officer may direct, and in the case of a continuing default, such further amount or amounts as the Assessing Officer may, from time to time, direct, so, however, that the total amount of penalty does not exceed the amount of tax in arrears.

Notes:

- (a) The assessee shall be given a reasonable opportunity of being heard.
- (b) Where the assessee proves to the satisfaction of the Assessing Officer that the default was for good and sufficient reasons, no penalty shall be levied under this section.
- (c) An assessee shall not cease to be liable to any penalty merely by reason of the fact that before the levy of such penalty he has paid the tax.
- (d) Where as a result of any final order the amount of tax, with respect to the default in the payment of which the penalty was levied, has been wholly reduced, the penalty levied shall be cancelled and the amount of penalty paid shall be refunded.

7.3 CERTIFICATE TO TAX RECOVERY OFFICER [Sec. 222]

- When an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may draw up under his signature a statement in the prescribed form (Form 57) specifying the amount of arrears due from the assessee (such statement being hereafter referred to as "certificate") and shall proceed to recover from such assessee the amount specified in the certificate by one or more of the modes mentioned below (in accordance with the rules laid down in the Second Schedule)
 - (a) attachment and sale of the assessee's movable property;
 - (b) attachment and sale of the assessee's immovable property;
 - (c) arrest of the assessee and his detention in prison;
 - (d) appointing a receiver for the management of the assessee's movable and immovable properties.
- The assessee's movable or immovable property shall include any property which has been transferred, directly or indirectly after 31-5-1973, by the assessee to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, **and** which is held by, or stands in the name of, any of the persons aforesaid.

If the movable or immovable property was transferred to his minor child or his son's minor child, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the assessee's movable or immovable property for recovering any arrears due from the assessee.

Certificate of tax Recovery

- No step in execution of a certificate shall be taken until the period of 15 days has elapsed since the date of the service of the notice. However, if the Tax Recovery Officer is satisfied that the defaulter is likely to conceal, remove or dispose of his property, he may at any time direct, for reasons to be recorded in writing, an attachment of such property.

Further, if the defaulter whose property has been so attached furnishes security to the satisfaction of the Tax Recovery Officer, such attachment shall be cancelled from the date on which such security is accepted by the Tax Recovery Officer.

- Arrear amount includes:
 - (a) interest upon the amount of tax or penalty or other sum to which the certificate relates as is payable in accordance with sec. 220(2); and
 - (b) all charges incurred in respect of:
 - (i) the service of notice and of warrants and other processes; &
 - (ii) all other proceedings taken for realising the arrears

Certificate of tax Recovery

- The proceeds shall be disposed of in the following manner:
 - (a) they shall first be adjusted towards the amount due under the certificate in execution of which the assets were realised and the costs incurred in the course of such execution;
 - (b) if there remains a balance, the same shall be utilised for satisfaction of any other amount recoverable from the assessee under this Act which may be due on the date on which the assets were realised; &
 - (c) the balance, if any, remaining after above adjustments shall be paid to the defaulter.
- The order of Tax Recovery Officer relating to the execution or discharge etc. shall be final.

However, a suit may be brought in a civil court upon the ground of fraud.
- If at any time after the certificate is drawn up by the Tax Recovery Officer the defaulter dies, the proceedings (except arrest and detention) may be continued against the legal representative of the defaulter.
- An appeal from any original order passed by the Tax Recovery Officer shall lie to the Chief Commissioner or Commissioner. Such appeal must be presented within 30 days from the date of the order appealed against. Pending the decision of any appeal, execution of the certificate may be stayed if the appellate authority so directs, but not otherwise.

7.4 TAX RECOVERY OFFICER BY WHOM RECOVERY IS TO BE EFFECTED [See. 223]

- The Tax Recovery Officer competent to take action u/s 222 shall be:
 - (a) the Tax Recovery Officer within whose jurisdiction the assessee carries on his business or profession or within whose jurisdiction the principal place of his business or profession is situate; or
 - (b) the Tax Recovery Officer within whose jurisdiction the assessee resides or any movable or immovable property of the assessee is situate,

the jurisdiction for this purpose being the jurisdiction assigned to the Tax Recovery Officer under the orders or directions issued by the Board, or by the Chief Commissioner or Commissioner who is authorised in this behalf by the Board in pursuance of sec. 120.

- Where an assessee has property within the jurisdiction of more than one Tax Recovery Officer and the Tax Recovery Officer by whom the certificate is drawn up:
 - (a) is not able to recover the entire amount by sale of the property, movable or immovable within his jurisdiction; or
 - (b) is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount, it is necessary so to do,

he may send the certificate or, where only a part of the amount is to be recovered, a copy of the certificate certified in the prescribed manner and specifying the amount to be recovered to a Tax Recovery Officer within whose jurisdiction the assessee resides or has property and, thereupon, that Tax Recovery Officer shall also proceed to recover the amount as if the certificate or copy thereof had been drawn up by him.

7.5 VALIDITY OF CERTIFICATE AND CANCELLATION OR AMENDMENT THEREOF [Sec. 224]

It shall not be open to the assessee to dispute the correctness of any certificate drawn up by the Tax Recovery Officer on any ground whatsoever, but it shall be lawful for the Tax Recovery Officer to cancel the certificate if, for any reason, he thinks it necessary so to do, or to correct any clerical or arithmetical mistake therein.

7.6 STAY OF PROCEEDINGS [Sec. 225]

- It shall be lawful for the Tax Recovery Officer to grant time for the payment of any tax and when he does so, he shall stay the proceedings for the recovery of such tax until the expiry of the time so granted.
- Where the order giving rise to a demand of tax for which a certificate has been drawn up is modified in appeal or other proceeding under this Act, and, as a consequence thereof, the demand is reduced but the order is the subject-matter of further proceeding under this Act, the Tax Recovery Officer shall stay the recovery of such part of the amount specified in the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.
- When the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, TRO shall amend the certificate or cancel it.

Other mode of recovery of demand

• Section	Description
• 226	Other modes of recovery
• 227	Recovery through state government
• 228A	Recovery of tax as per agreements with foreign countries
• 229	Recovery of penalties, fine, interest and other sums
• 232	Recovery by suit or under other law not affected
• 254	Orders of Appellate Tribunal
• 276	Removal, concealment, transfer or delivery of property to make bar for the tax recovery proceedings
• 276B	Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B
• 276BB	Failure to pay the tax collected at source.
• 276C	Wilful attempt to evade tax, etc.
• 281	Certain transfers to be void
• 281B	Provisional attachment to protect revenue in certain cases

Stay of Demand

- CBDT Instruction dated 29 February 2016 ¶ Modifies instruction No. 1914 dated March 21, 1996 to lay down guidelines for stay of demand pending appeal before CIT(A)
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- ¶ Cases where outstanding demand disputed, AO to grant stay of demand till disposal of appeal by CIT(A) on payment of 15% of disputed demand, subsequently CBDT vide instruction No. F.NO.404/72/93 – ITCC dt.31/07/2017 replaced 15% by 20% only keeping all the condition remain enforced lays down exceptions
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- ¶ Illustrates that where addition on same issue confirmed by appellate authorities in earlier years or by SC or HC in favour of Revenue or where such addition based on credible evidence collected in search or survey, AO can refer matter to Pr CIT/CIT if AO feels that payment of lump sum amount higher than 15% is warranted
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- ¶ Where addition on same issue deleted by appellate authorities in earlier years or SC or HC decided issue in favour of assessee. AO can refer matter to CIT if it feels that payment of lump sum lower than 15% is warranted
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- ¶ CIT to hold power of review, all appeal, review and reference to be decided within 2 weeks, A.O. empowered to impose conditions

Stay of Demand

- Stay Proceedings before AO
- Principles/Guidelines prescribed by Bombay High Court in case of UTI Mutual Fund (345 ITR 71) (Bom)
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- ► No recovery of tax should be made pending:-
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- ► Expiry of the time limit for filing an appeal; ► Disposal of a stay application, if any, moved by the assessee and for a reasonable period thereafter to enable the assessee to move a higher forum, if so advised. Coercive steps may, however, be adopted where the authority has reason to believe that the assessee may defeat the demand, in which case brief reasons may be indicated.
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- ► The stay application, if any, moved by the assessee should be disposed of after hearing the assessee and keeping in mind the guidelines in KEC International Ltd. v. B.R. Balakrishnan (2001) 251 ITR 158 (Bom)
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- ► If the AO has taken a view contrary to what has been held in the preceding previous years without there being a material change in facts or law, that is a relevant consideration in deciding the application for stay.

Stay of Demand

- **Valid service of Notice of demand made U/s 156**
- **Mohan Wahi v. CIT(2001) 248 ITR 799(SC)**
- The court held that valid service is mandatory; in case of failure to serve the notice, recovery proceedings are held to be not valid. Service of demand notice constitutes foundation for subsequent proceedings. Demand Notice not received by assessee, recovery proceeding held to be not valid.
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- **► CIT v. Sattandas Mohandas Sidhi (1982) 230 ITR 591 (MP) (High Court)**
- It was held that, it is mandatory that notice must be served only in the manner provided in section 282 of the Income Tax Act, hence notice by telegram could not be said to be a substitute for notice by post. However, now even Electronic mode is prescribed u/s 282(2) as acceptable mode of communication of notice. At the relevant time only service by post or by way of summons issued by court under CPC were available.
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- **► CIT v. Malchand Surana (1958) 28 ITR 684 (Cal.) (High Court)**
- General Clauses Act, 1897, Section 27 deals with meaning of service by post. If it is sent by registered post and acknowledgement is produced the presumption is that it is a proper service.

Stay of Demand

- **Stay Proceedings before CIT(A)**
- Powers of CIT(A) to grant stay of demand
- ► No necessity to approach the AO before the CIT(A).
- Based on certain judicial precedents like Tin Manufacturing Co of India (212 ITR 451) (All) and Kesav Cashew Co (210 ITR 1014) (Ker) , it is possible to contend that the assessee need not approach the AO before applying to CIT(A) for stay of recovery of tax.
- However, practically it is advisable to approach the AO before filing a stay petition with the CIT(A). In case the AO rejects the stay petition, then an assessee may approach the CIT(A).
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- ► **When an appeal is pending before the CIT(A)**
- ► The CIT(A) is empowered to stay the recovery of tax against an application filed by the assessee.
- ► The assessee has to first file the appeal before filing the stay application. It is his discretion either to stay the recovery proceedings or to reject the same, depending upon the facts and circumstances of each case.
- ► The power of the appellate authority to stay the recovery of the demand of dues which are the subject matter of appeal pending before him is independent of the provisions of sub-section(6) of section 220 of the Act.
- In practice, it is advisable to make application to the Assessing Officer & CIT(A) simultaneously to stay the recovery proceedings. In following cases it has been held that the CIT(A) has the power to Stay the Recovery Proceedings.

Stay of Demand

- it is judicially accepted that the CIT(A) has the inherent powers to stay the recovery of taxes in appropriate cases, while deciding the appeal pending before it. The same has been held in the following cases:-
 - ► MK Mohammed Kunhi 71 ITR 815 (SC)
 - ► TIN Manufacturing Co of India 212 ITR 451 (All)
 - ► Debasish Moulik 231 ITR 737 (Cal)
 - ► Keshav Cashew Co v DCIT 210 ITR 1014 (Ker)
 - ► Prem Prakash Tripathi v. CIT(1994) 208 ITR 461 (All) (High Court)
 - ► Paulsons Litho Works v. ITO(1994) 208 ITR 676 (Mad) (High Court)
 - ► Agricultural Produce Market Committee vs. CIT (2005) 279 ITR 371 (Pat.)(High Court)
 - ► Debasish Moulik vs. Dy. CIT (1998) 231 ITR 737 (Cal.)(High Court)
 - ► LG Electronics India Pvt. Ltd. v. CIT (2012) 209 Taxman 536 (All)(High Court)
 - ► CITY ad Industrial Development Corporation of Maharashtra Ltd. v. ACIT (2012) 343 ITR 102 (Bom) (High Court)
 - ► Idea Cellular Ltd. v. CIT (2012) 75 DTR 105 (MP) (High Court)
 - ► Balaji Universal Tradelink (P) Ltd. v. UOI (2012) 76 DTR 132 (Bom) (High Court)

Stay of Demand

- **Stay Proceedings before ITAT**
- Procedure for Stay Petition – Rule 35A of the ITAT Rules 1963
- ► Every Stay Application shall be presented in Triplicate
- ► Application to set forth concisely the following:-
- ► Short Facts
- ► Results of Appeal
- ► Tax, interest, penalty etc. demanded, amount undisputed therefrom and amount outstanding
- ► Date of Filing Appeal
- ► Result of any Stay Application to the lower Revenue Authorities
- ► Reasons for seeking stay
- ► Whether Applicant is prepared to offer security, and if so, in what form
- ► Clear and Concise prayers
- ► Affidavit
- ► An application which does not confirm with the above, liable to be summarily rejected

Stay of Demand

- **Documents to be accompanied when filing Stay Petition to Hon'ble Tribunal**

- ▶ Covering Letter
- ▶ Stay Application
- ▶ Correspondences before lower authorities
- ▶ Documents highlighting financial position
- ▶ Any other relevant documents for stay
- ▶ Duly notarised affidavit on Stamp Paper of Rs. 500
- ▶ Challan of Rs. 500

- **Stay on Protective assessment**

- **Any Recovery** in pursuance of such protective assessment is not permitted. However order of protective attachment can be made.
- ▶ Sunil Kumar v. CIT (1983) 139 ITR 880 (Bom) (High Court)
- ▶ Lalji Haridas v. ITO (1961) 43 ITR 387 (SC)
- ▶ Jagannath Bawri v. CIT (1998) 234 ITR 464 (Gau)(High Court)
- ▶ Jagannath Hanumanbux v. ITO (1957) 31 ITR 603 (Cal) (High Court)
- ▶ R. Rajbabu v. TRO (2004) 270 ITR 256 (Mad) (High Court)
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Stay of Demand

- **Consequences of being Assessee in Default**

- ► Charge of mandatory interest under section 220(2). At present it is 1% p.m. or part of a month
- ► Penalty under section 221 of the Act
- ► Attachment / auction of moveable / immovable properties
- ► Prosecution / arrest / detention

- **Stay of Demand : Section 220(3), 220(4)**

- ► Reply of assessee to keep the demand in abeyance
- ► An application for stay of disputed demand must be made before the Assessing Officer before the expiry of time prescribed in notice of demand
- ► Reply should be with reasons stating how the assessee is entitled for stay of recovery, how addition made was not proper, financial difficulties etc.
- ► The assessee must request for stay of recovery till the appeal is disposed. If the issue is covered by jurisdictional High or Apex Court, refer the case laws.
- ► Assessee may also refer the financial difficulties faced by the assessee. How the assessee is complying with the guidelines laid down by the courts may also be demonstrated. This will help the assessee, when they approach for stay of recovery before Commissioner or High Court.
- ► One may also request that if the Assessing Officer decides to proceed further one more opportunity of personal hearing may be given.

How to respond to Income Tax Demand

Course of action after Assessment

Assessee

Rectification u/s 154

Appeals to CIT (Appeals)

Revision u/s 264

Department

Rectification u/s 154

Revision u/s 263

Reassessment u/s 147

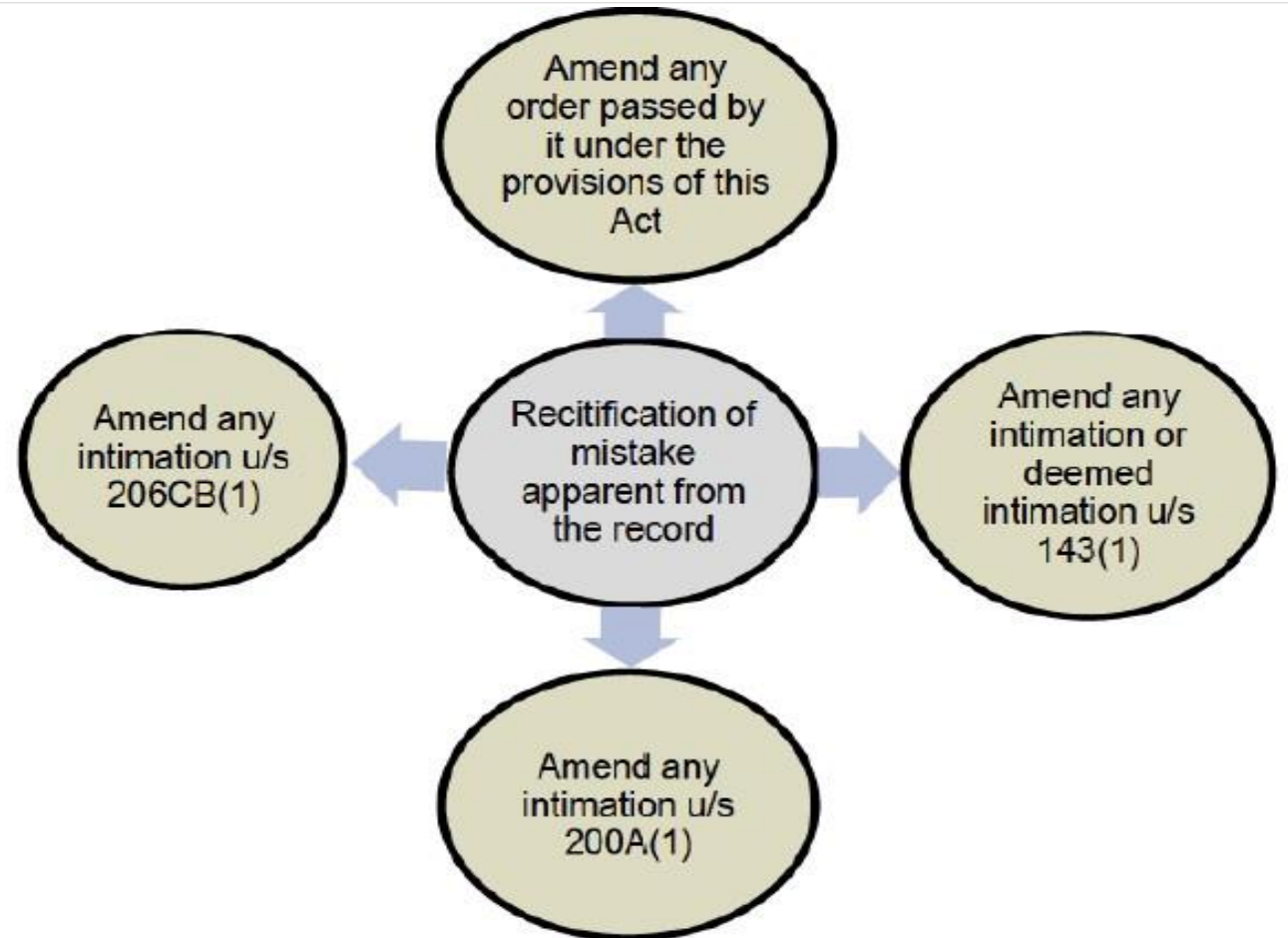
Section 154 (1) With a view to rectify any mistake apparent from record an Income Tax Authority referred under section 116 may

- ☐ ***(a) Amend any order passed by it***
- ☐ ***(b) Amend intimation or deemed intimation under section 143(1)***
- ☐ ***(c) Amend intimation under section 200A(1)***
- ☐ ***(d) Amend any intimation under sub-section (1) of section 206CB.***

Note: Income Tax Authority referred u/s 116 (does not include Tribunal) may amend any ORDER passed by it or Intimation under section 143(1) or 200A(1) if found any MISTAKE APPARENT FROM RECORD.

**An income-tax authority, is empowered
(suo moto or on application by assessee) to**

- ☐ (a) rectify any mistake apparent in an order passed by him; or
- ☐ (b) amend any intimation issued u/s 143(1) or deemed intimation
- ☐ (c) amend any intimation issued u/s 200A(1) or 206CB(1).



Mistake apparent from Record

Mistake apparent from the record may be a mistake of fact as well as mistake of law - For instance, the treatment of non-agricultural income as agricultural income and granting exemption in respect of such income is an obvious mistake of law which could be rectified under section 154.

Mere change of opinion cannot be basis for rectification - A mere change of opinion, however, cannot be the basis on which the same or the successor Assessing Officer can treat a case as one of rectification of mistake. A mistake is one apparent from the record in case, where it is a glaring, obvious, patent or self-evident. Mistake, which has to be discovered by a long drawn process of reasoning or examination or arguments on points, where there may be two opinions, cannot be said to be mistake or error apparent from the record.

Subsequent decision of Supreme Court - A mistake arising as a result of subsequent interpretation of law by the Supreme Court would also constitute error apparent from the record.

Retrospective amendment of law - could also lead to rectification if an order is plainly and obviously inconsistent with the specific and clear provision, as amended retrospectively.

Mistake apparent from Record

Doctrine of Partial Merger - Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to a rectifiable order, the authority passing such order may, amend the order in relation to any matter other than the matter which has been so considered and decided.

Amendment may be *suo motu* or the same may be brought to notice by the assessee or deductor - The concerned authority may make an amendment on its own motion. However, he should mandatorily make the amendment for rectifying any such mistake which has been brought to its notice by the assessee or the deductor. Where the authority concerned is the Deputy Commissioner (Appeals) or the Commissioner (appeals), the mistake can be pointed out by the Assessing Officer also.

Opportunity of being heard to be given to the assessee or deductor before enhancing an assessment or reducing a refund - An amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee or the deductor, shall not be made unless the authority concerned has given notice to the assessee or the deductor of its intention so to do and has allowed the assessee or the deductor a reasonable opportunity of being heard.

Mistake apparent from Record

- ❑ **Note 1** – Order does not necessarily means original order, it include amended order and rectified order. [[Hind Wire Industries Ltd. V CIT \(1995\) 212 ITR 639 SC](#)]
- ❑ **Note 2** – Obvious mistake of law cannot be rectified under section 154, while mistake of fact apparent from record can be rectified. [[Venkatachalam \(M.K.\) ITO V Bombay Dying & Mfg Co.Ltd 1958 34 ITR 143 SC, AIR 1958 SC 875, 1959 SCR 703](#)]
- ❑ **Note 3** – Records must show that there has been an error and that error may be rectified; Reference of documents outside the record and the law is impermissible when applying the provisions of section 154. [[CIT V Keshri Metal Pvt Ltd. \(1999\) 237 ITR 165 SC](#)]
- ❑ **Note 4** – Mistake means commission that is not designed and which is obvious and something which has no two opinions or which is debatable. [[CIT V Lakshmi Prasad Lahkar \(1996\) 220 ITR 100 \(GAU\)](#)]

Mistake apparent from Record

- ❑ 4. ITAT can make rectification subject to the provisions of **Section 254(2)**
- ❑ 5. Where an assessment order not in tune with the law laid down by a binding precedent, it would amount to an error apparent on the record for the purpose of invoking rectification under section 154. [**Hindustan Lever Limited Vs JCIT (Calcutta High Court)**]
- ❑ 6. Addition of debatable nature cannot be subject of Section 154 rectification. [**ACIT Vs Shri Punit J. Patel (ITAT Mumbai)**]
- ❑ 7. Notice Mandatory to Pass Rectification Order U/s. 154 [**Aparna Ashram Vs. ADIT(E) (ITAT Delhi)**]
- ❑ 8. Section 154 AO cannot refuse rectification for mistake attributed to assessee [**ACIT Vs Rupam Impex (ITAT Ahmedabad)**]

Action of the Assessing Officer on Rectification

	Case	Action to be taken by A.O.
(i)	Where an amendment is made under this section	An order shall be passed in writing by the authority concerned
(ii)	Where any such amendment has the effect of reducing the assessment, or otherwise reducing the liability of the assessee or the deductor	The Assessing Officer shall make any refund due to such assessee or the deductor
(iii)	Where any such amendment has the effect of enhancing the assessment or reducing the refund already made or otherwise increasing the liability of the assessee or the deductor	The Assessing Officer shall serve on the assessee or the deductor, as the case may be a notice of demand in the prescribed form specifying the sum payable

Mistake Apparent from Record

The meaning of “Mistake” from the perspective of section 154 is as follows:

- ❖ Mistake includes any arithmetical & clerical errors/mistakes
 - ❖ Misreading a clear provision of the Income Tax Act
 - ❖ Applying an inapplicable provision of the act
 - ❖ Non-following a decision of Jurisdictional High court
 - ❖ Erroneous application of a provision of the act
 - ❖ Overlooking a non-discretionary but mandatory provision
- ❑ **Some examples related to these above-mentioned mistakes are:**

- ❖ Mismatch in Advance Tax.
- ❖ Gender specified incorrectly.
- ❖ Mismatch in tax credit.
- ❖ At the time of filing additional details were not submitted for capital gains.

OTHER RELEVANT JUDGEMENTS:

- ❑ 1. When mistake apparent from record is brought to the notice of Assessing Officer, he is mandatorily bound to pass such order. [Hirday Narain (L) V ITO (1970) 78 ITR 26 (SC)]
- ❑ 2. The power to rectify the error must extend to the elimination of error, may be the error may be such as to go to the root of order and its elimination may result in the whole order falling to the [Blue Star Engineering Co. (Bombay) Pvt. Ltd V CIT (1969) 73 ITR 283]
- ❑ 3. Subsequent interpretation of law by Supreme Court would constitute as Mistake Apparent from Record. [Seshvatram (B V K) V CIT (1994) 210 ITR 633 AP

Time limit for Rectification [Sec.154(7)]

- ❑ Within **4 years** from the end of the financial year in which the order sought to be amended was passed.
- ❑ However, in respect of an application made by the assessee or deductor or collector, the authority shall, within a period of 6 months from the end of the month in which the application is received by it, pass an order –
 - ❖ a. making the amendment; or
 - ❖ b. refusing to allow the claim.

(CBDT CIRCULAR NO. 14/2001 Dated- 9-11-2001)



Rectification of Error – Few Judiciary Pronouncements

- ❑ The word '**order**' in expression 'from the date of the order sought to be amended' in section 154(7) includes amended or rectified order. Therefore, where original assessment was subsequently rectified, a second application for rectification made within four years from date of rectificatory order was valid. **Hind Wire Industries Ltd. v. Commissioner of Income-tax [1995] 80 Taxman 79 (SC)/[1995] 212 ITR 639 (SC)/[1995] 124 CTR 219 (SC)**
- ❑ Limitation period is applicable only to making of order and not issue of demand notice. – **S.T.Telu v. CIT (1958) 33 ITR 463 (Mad)**

Rectification of Error – Few Judiciary Pronouncements

- ❑ The period of limitation of four years for purpose of section 154(7) would start from date of fresh assessment and not from date of initial assessment and, therefore, rectification made was not barred by limitation. Rectification order passed within period of limitation for giving effect to law laid down by Supreme Court subsequently, was perfectly proper exercise of power. **Southern Industrial Corpn. Ltd. v. Commissioner of Income-tax [2003] 126 TAXMAN 170 (Madras)**
- ❑ Merely because appeal or revision of assessment order was pending, there was no embargo on power of amendment / rectification, as matter did not assume character of a subjudice matter. **Piramal Investment Opportunities Fund v. Assistant Commissioner of Income-tax, Mumbai. [2019] 111 taxmann.com 5 (Bombay).**

Rectification of Error – Few Judiciary Pronouncements

- ❑ Where Assessing Officer failed to apply binding precedent that blending of tea leaves was not manufacturing or production activity and had wrongly allowed deduction under section 80-I, same being an error apparent on face of record, assessment order was to be rectified. Hindustan Lever Ltd. v. Joint Commissioner of Income-tax, Special Range-2, Calcutta.
- ❑ Settlement Commission cannot reopen its concluded proceedings by invoking section 154 so as to levy interest under section 234B - Brij Lal v. Commissioner of Income-tax, Jalandhar[2010] 194 Taxman 566 (SC)/[2010] 328 ITR 477 (SC)/[2010] 235 CTR 417 (SC)

Rectification of Error – Few Judiciary Pronouncements

- ❑ Rectification petition under section 154 is not obligatory on the part of Assessing Officer if clear data is not available. – **Anchor Processing (P) Ltd v. CIT, 1986 161 ITR 159 (SC)**
- ❑ If an error creeps in in an order due to uploading of return or software, it is an error apparent from record and can be rectified u/s 154 – **Zentech Offshore Eng. (P) Ltd v. CIT, (2017) 82 taxmann.com 71 (Mum)**
- ❑ Order of assessment is not only mean as record, but it comprises of all proceedings on which assessment order is based upon - **Maharana Mills (P.) Ltd. v. Income-tax Officer, [1959] 36 ITR 350 (SC).**

Rectification of Error – Few Judiciary Pronouncements

- ❑ Writ petition to quash a notice under section 154 without exhausting such remedies is not maintainable - V. K Construction Works Ltd v. CIT (1995) 215 ITR 26 (P&H).
- ❑ In terms of provisions of Explanation 1(ii) to section 153, period of limitation for assessment can be stayed only by an order or injunction of any Court and as soon as said order or injunction of Court is vacated, period of limitation shall re-start even though order vacating injunction is not communicated to department - **Commissioner of Income-tax-1, Agra v. Chandra Bhan Bansal - [2014] 46 taxmann.com 108 (Allahabad)/[2014] 226 Taxman 421 (Allahabad)/[2015] 273 CTR 450 (Allahabad)**

Rectification of Mistake

❑ Order of Rectification [Section 154(4)]:

- ❖ An order of rectification shall be passed in writing by the income-tax authority concerned.
- ❖ Refusal to make rectification shall also require an order under this section.

❑ Refund to be given in case Rectification results into Reduction of Assessment [Sec-154(5)]:

- ❖ AO shall make any refund which may be due to such assessee or deductor or collector.
- Notice of Demand to be issued in case Rectification results in to Enhancing the Assessment, etc. [Section 154(6)]:**
- ❖ If rectification has the effect of enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee or the deductor or the collector, the AO shall serve on the assessee or the deductor or the collector, as the case may be, a notice of demand in the prescribed form specifying the sum payable.
 - ❖ such notice of demand shall be deemed to be issued u/s 156 and the provisions of the Income-tax Act shall apply accordingly.

Q&A

