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144. Best judgment assessment.

144. (1) If any person—

- (a) fails to make the return required 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) of that section, or
- (b) fails to comply with all the terms of a notice issued under sub-section (1) of section 142 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 on the basis of such assessment :

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.

Sub-section (2) is a transitional provision not applicable from AY 1989-90 & onwards.

(2) 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

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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. {Irrelevant}

Analysis

1. No notice under section 144 is required if notice under section 142(1) has been issued.
2. Such notice under section 142(1) – must specify the BJA?
3. **Time Limit – 144 order r/w 153(1)**

Time limit to pass assessment order u/s 144

*Time limit for **completion** of assessment, reassessment and recomputation.*

*153. (1) No order of assessment shall be made under section **143** or section **144** at any time after the expiry of **twenty-one months** from the end of the assessment year in which the income was **first assessable**.*

PY ---- | ---- AY income was first Assessable ---- | end of AY 31/3/AY | ---- 21 months --- | Dec-31 next to next AY |

4. Is 143(2) notice is required? – no (different form 147)

Failures

1. To file return of Income u/s 139
2. Failure to comply with notice under section 142(1) – [notice to furnish ROI / Accounts or Documents / information relating to all Assets and liabilities]
3. Failure to comply with notice under section 142(2A) – [Assessee - Get Audited + Obtain report and furnish to AO]
4. Failure to comply with terms of notice u/s 143(2) – [attend the office of AO / evidence to support the return filed]

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144A. Power of Joint Commissioner to issue directions in certain cases.

144A. A Joint Commissioner may,

on his own motion or

on a reference being made to him by the Assessing Officer or

on the **application of an assessee**,

- call for and examine the record of any proceeding in which an assessment is pending and, **if he considers** that, having regard to the nature of the case or the amount involved or for any other reason, it is necessary or expedient so to do,

- he **may**

- issue such **directions** as he thinks fit **for the guidance of the Assessing Officer** **to enable** him **to complete** the assessment and
- such directions shall be **binding on the Assessing Officer** :

Provided that no directions which are prejudicial to the assessee shall be issued before an opportunity is given to the assessee to be heard.

Explanation.—For the purposes of this section **no** direction as to the lines on which an investigation connected with the assessment should be made, shall be deemed to be a direction **prejudicial** to the **assessee**.

2(28C) "Joint Commissioner" means a person appointed to be

— a Joint Commissioner of Income-tax or

— an Additional Commissioner of Income-tax under sub-section (1) of section 117;

144B.*Omitted* Reference to Deputy Commissioner in certain cases.

144BA. Reference to Principal Commissioner or Commissioner in certain cases.**{GAAR}**

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144C. Reference to dispute resolution panel.[New section inserted FA 2009wef 01/04/2009]

144C. (1) The Assessing Officer shall,

— notwithstanding anything to the *contrary* contained in this Act,
in the first instance,

- forward a **draft** of the proposed order of assessment (hereafter in this section referred to as the draft order)
- to the *eligible assessee*

if he **proposes to make**, *on or after the 1st day of October, 2009, {even for AY prior to this date}*

- any **variation**~~in the income or loss returned~~
- which is **prejudicial** to the interest of such **assessee**.

FA 2020, 1/4/2020

include cases, where the AO proposes to make any variation which is prejudicial to the interest of the assessee, *within the ambit of section 144C*

Interpretation -“if he **proposes to make**, *on or after the 1st day of October, 2009*”

CIRCULAR NO. 9/2013 Dated: November 19, 2013

Sub: **Clarification in respect of Circular No.5/2010 - F. No. 142/13/2010 -SO (TPL) dated 03.06.2010**

Section 144C is applicable to any order which proposes to make variation in income or loss returned by an eligible assessee, on or after 1st October, 2009 **irrespective of the assessment year** to which it pertains. (i.e., not AY 2010-11 and subsequent years)

(2) On receipt of the draft order,

- the eligible assessee shall,
- within **thirty** days of the *receipt* by him of the draft order,—
 - (a) file his **acceptance** of the variations to the Assessing Officer; or
 - (b) file his **objections**, if any, to such variation with,—

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(i) the Dispute Resolution Panel; and

(ii) the Assessing Officer.

(3) The Assessing Officer shall complete the assessment on the basis of the draft order, if—

(a) the assessee intimates to the Assessing Officer the acceptance of the variation; or

(b) no objections are received within the period specified in sub-section (2).

(4) The Assessing Officer shall,

— notwithstanding anything contained in section 153 or section 153B,

— pass the assessment order under sub-section (3)

— within one month from the end of the month in which,—

(a) the acceptance is received; or

(b) the period of filing of objections under sub-section (2) expires.

(5) The Dispute Resolution Panel shall,

— in a case where any objection is received under sub-section (2),

— issue such directions, as it thinks fit,

— for the guidance of the Assessing Officer to enable him to complete the assessment.

(6) The Dispute Resolution Panel shall issue the directions referred to in sub-section (5),

after considering the following, namely:—

(a) draft order;

(b) objections filed by the assessee;

(c) evidence furnished by the assessee;

(d) report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;

(e) records relating to the draft order;

(f) evidence collected by, or caused to be collected by, it; and

(g) result of any enquiry made by, or caused to be made by, it.

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(7) The Dispute Resolution Panel **may, before issuing** any **directions** referred to in sub-section (5),—

(a) make such further **enquiry**, as it thinks fit; or

(b) cause

— any further enquiry to be made by any income-tax authority and

— report the result of the same to it.

(8) The Dispute Resolution Panel

— may **{power to}**

○ confirm,

○ reduce or

○ enhance

the variations proposed in the **draft order** so,

— however, that it **shall not** **{No power to}**

○ set aside any proposed variation **or**

○ issue any direction under sub-section (5) for further enquiry and passing of the assessment order.

Explanation.—For the removal of doubts, it is hereby declared that

— the power of the Dispute Resolution Panel to enhance the variation

— shall include and shall be deemed always to have included

○ the **power to consider any matter** arising out of the assessment proceedings relating to the draft order,

○ **notwithstanding** that such **matter** was **raised** or **not** by the eligible assessee.

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- (9) If the **members** of the Dispute Resolution Panel **differ** in opinion on any point,
— the point shall be decided according to the opinion of the majority of the members.
- (10) Every **direction** issued by the Dispute Resolution Panel
— **shall** be binding on the Assessing Officer.
- (11) No direction under sub-section (5) shall be issued
— unless an opportunity of being heard is given to
 - the assessee and
 - the Assessing Officer
— **on such** directions which are **prejudicial** to the interest of the assessee or the interest of the revenue, respectively.
- (12) No **direction** under sub-section (5)
— shall be issued **after nine months** from the end of the month in which the draft order is **forwarded** to the eligible assessee.
- |-----●- Date of Forward (issue) Draft order ---- End of Month -|-----9 Month-|--≠|*
- (13) Upon receipt of the directions issued under sub-section (5),
— the Assessing Officer **shall**,
— in conformity with the directions,
— **complete**,
 - notwithstanding anything to the contrary contained in section 153 or section 153B,
— the **assessment** without providing any further opportunity of being heard to the assessee,
— within **one month** from the **end** of the month in which such direction is **received**.

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(14) The Board may make **rules** for the purposes of the efficient functioning of the Dispute Resolution Panel and expeditious disposal of the objections filed under sub-section (2) by the eligible assessee.

Income-tax (Dispute Resolution Panel) Rules, 2009.

*(14A) The provisions of this section shall **not apply** to any assessment or reassessment order passed by the Assessing Officer **with the prior approval** of the Principal Commissioner or Commissioner as provided in sub-section (12) of section 144BA.*

(15) For the purposes of this section,—

(a) "Dispute Resolution Panel" means a collegium comprising of **three** Principal Commissioners or Commissioners of Income-tax constituted by the Board for this purpose;

(b) "eligible assessee" **means**,—

- (i) 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
- (ii) **any non-resident not being a company, or any foreign company.**

FA 2020, 1/04/2020 These amendments will take effect from expand the scope of the said section by defining eligible assessee as a non-resident (not being company). This is applicable for Any AY referred to DRP after 1st April, 2020.
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