



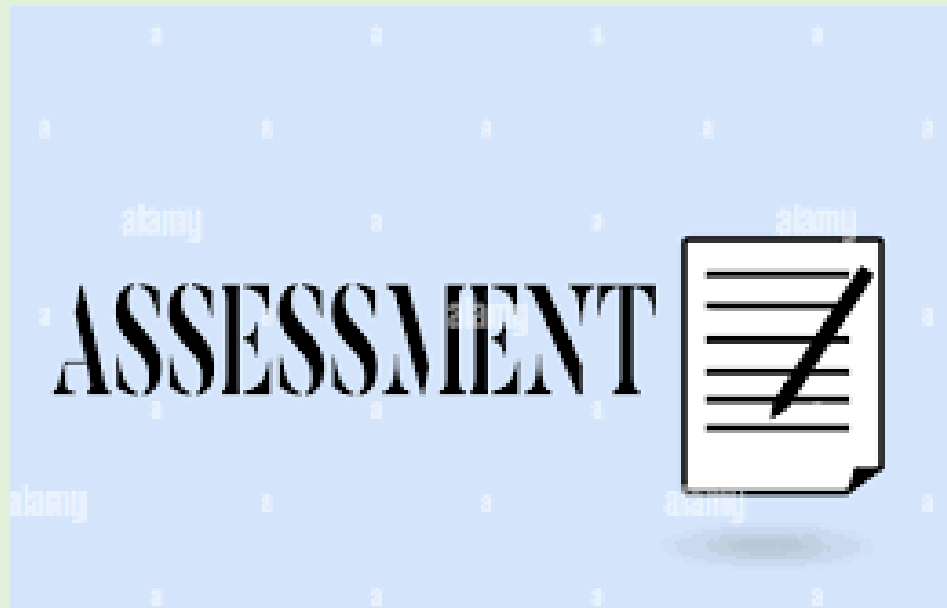
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Advanced Course on Income Tax Appeals & Assessment



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

Understanding Section 144 of the Income Tax Act, 1961

- Section 144 of the Income Tax Act empowers the Assessing Officer (AO) to make a tax assessment based on their best judgement when a taxpayer fails to comply with certain statutory requirements. This provision serves as both a deterrent against non-compliance and a tool for the tax department to ensure that all taxable income is brought under the tax net, even in the absence of complete information from the taxpayer.

HISTORICAL CONTEXT OF SECTION 144

- To truly understand Section 144 of Income Tax Act, it's helpful to look at its historical context.

The provision has been a part of the Indian tax system since the inception of the Income Tax Act in 1961. Over the years, it has undergone several amendments to keep pace with changing economic scenarios and to plug loopholes that could be exploited by tax evaders.

Initially, the section was primarily used as a deterrent against non-compliance. However, as the Indian economy grew more complex and diverse, the application of Section 144 also evolved.

Today, it serves not just as a tool for assessment in cases of non-compliance, but also as a means to ensure fairness in the tax system and to tackle sophisticated forms of tax avoidance.

WHEN DOES SECTION 144 COME INTO PLAY

1. Missed deadlines
2. Incomplete information
3. Audit non-compliance
4. Questionable accounts
5. Scrutiny avoidance

Applicability of Section 144

- According to Section 144 of the Income Tax Act, the assessing officer starts the best judgement assessment. AO will use an evaluation of best judgement for the following reasons:
- If a taxpayer does not comply with all the terms of a notice issued under Section 142(1), is unable to file an IT return by the prescribed due date under [Section 139\(1\)](#), files a belated return as per Section 139(4), files a revised return as per [Section 139\(5\)](#), or files an updated return under [Section 139\(8A\)](#)
- If a taxpayer disregards any of the instructions provided in Section 142(2A)
- If an AO finds that a taxpayer's accounts are incomplete or inaccurate, or if the taxpayer has not followed a consistent accounting system
- If, following the filing of an IT return, a taxpayer does not comply with all of the provisions of a notification—a notice of scrutiny assessment—issued in accordance with [Section 143\(2\)](#)

THE BROADER PICTURE: WHY SECTION 144 EXISTS

- Encouraging compliance
- Tackling tax evasion:
- Ensuring fairness
- Protecting revenue
- Deterring willful defaulters

As we move towards a more transparent and digital tax ecosystem, the role of Section 144 may evolve, but its core purpose of promoting compliance and fairness is likely to remain unchanged.

Steps for Best Judgement Assessment

Under Section 144, the assessing officer is required to follow the following process when conducting an evaluation using best judgement:

- Notice: Under Section 144, the assessing officer is required to notify the taxpayer of the proposed best judgement assessment.
- Chance to be heard: Prior to making the best judgement determination, the taxpayer must be granted a chance to be heard.
- Evidence: The evaluating officer must use the information and proof at their disposal to support their best judgement evaluation. Reasons for making the best judgement evaluation must be documented by the assessing officer.
- Serve order: The taxpayer must receive the order for the best judgement assessment from the assessing officer.

Notice under Section 144

- Best judgement assessment is applied in situations where a taxpayer fails to submit an IT return or refuses to assist in providing an explanation or supporting documentation for their tax assessment. Before carrying out such a decision, the assessing officer must notify the taxpayer.
- If the taxpayer still hasn't submitted an income tax return, the AO may, in accordance with [Section 142\(1\)](#), send notices requesting that he do so.
- Additionally, the officer may request that the taxpayer provide any necessary accounts or documents in writing and verify in the manner specified on any necessary points or matters. Regardless of whether they are included in the accounts, this can also include a statement of assets and liabilities.

Opportunity to the Assessee

- The assessee needs to be given a chance to be heard before any processes are started, just like in the majority of important matters. Furthermore, the assessee's request for an extension of time to submit pertinent papers or for an explanation of any other difficulties should be given careful consideration by the court rather than being turned down out of hand. Prejudice, bias, and other such things must be eliminated in the taxation domain. A fair trial on the assessee's returns is required. The assessing officer is responsible for making sure he follows the rules and adheres to the maxim that someone in his position should follow. Any tax authority must adhere strictly to the rules of honesty and compliance.
- It's also critical to remember that an evaluation conducted in accordance with Section 144's best judgement is not the last word. The taxpayer has the option to challenge the best judgement assessment order and argue his case in front of higher authorities. Before making a final decision, the appeal authority will take into account the evidence that was submitted by the assessing officer as well as the taxpayer.

CHALLENGING A BEST JUDGEMENT ASSESSMENT

An appeal with the Commissioner of Income Tax (Appeals) within 30 days of receiving the assessment order.

Exceptions to Best Judgement

It is not appropriate to use best judgement when assessing the following cases:

- Insignificant mistakes
- Merely the assessing officer's rejection of every piece of evidence
- Sending out invalid notices
- A best judgement determination is not justified if summons demanding the submission of books of account and other documents is disregarded
- Ignoring the notice would not result in the assumption if the assessee had filed a loss of return
- If the assessee fails to correct errors, appropriate action related to the error must be taken. Errors that are not corrected do not qualify for the best judgement.

Sum up

Section 144 of the Income Tax Act is crucial for every taxpayer. While it's a complex provision, being aware of its implications can help you navigate the tax landscape more effectively. Remember, the goal isn't just to avoid falling foul of Section 144, but to cultivate a habit of timely and accurate tax compliance.

By staying informed, maintaining good records, and seeking help when needed, you can ensure that your tax affairs remain in order. After all, in the world of taxes, knowledge truly is power – and peace of mind.

In conclusion, while Section 144 of Income Tax Act may seem intimidating, it's ultimately a tool designed to ensure fair and accurate tax assessment.

By understanding what Section 144 is, its implications, and how to avoid triggering it, you can navigate your tax responsibilities with confidence. Remember, proactive compliance is always the best strategy when it comes to dealing with tax authorities. Stay informed, stay organized, and when in doubt, don't hesitate to seek professional advice.

Dispute Resolution Panel (DRP) u/s 144C

- The venturing of international businesses into the Indian market implies more sources of collection of tax in the country. However, as the businesses grow, so should the capabilities of the Revenue department in resolving disputes. The Finance Bill 2009 brought in an additional option to assist in the litigation relating to transfer pricing matters called the **Dispute Resolution Panel (DRP)**.
- The DRP is an Alternative Dispute Resolution (ADR) mechanism for resolving disputes related to Transfer Pricing in International Transactions. This Panel has been set up with a view to providing speedy disposal of cases in a fair and just manner.

Eligible assessee

- The assessees who can opt for resolution under the Dispute Resolution Panel are foreign companies and those assessees against whom an unfavourable order has been passed by a Transfer Pricing Officer.

Constitution of the Dispute Resolution Panel

- The Dispute Resolution Panel is a body constituted by the Central Board of Direct Taxes (CBDT) and is a collegium consisting of three Commissioners of Income-tax.

When can resolution be sought under DRP?

- The Assessing Officer is required to forward a draft of his assessment order to the assessee where he intends to pass an order that is unfavourable to the assessee. The eligible assessee then is given a time limit of **30 days** within which he has to decide whether to accept the order or to object to the same.
- If the assessee decides to object to the order, he can file his objections with either the Assessing Officer or the DRP. If the objections are filed with the DRP, they will consider the case, provide the assessee with an opportunity of being heard and then direct the Assessing Officer based on their assessment. Such directions given by the DRP are binding on the Assessing Officer.

Matters to be considered by DRP

- The DRP can make any enquiries in relation to the assessment and also direct any income-tax authority to make an enquiry and forward the results. The Panel is required to consider the following before coming to a conclusion or issuing directions:
 - Draft order
 - Objections filed by the assessee
 - Evidence furnished by the assessee
 - Report of any authority (like Assessing Officer, Transfer Pricing Officer or Valuation Officer)
 - Records relating to the draft order
 - Evidence collected
 - Result of enquiries made.

The time limit for issuing directions and passing an order

- The DRP is required to issue directions to the Assessing Officer within **9 months** from the end of the month in which the assessee receives the draft order. Once the Assessing Officer receives such directions, he shall have to complete his assessment in accordance with such directions within **1 month** from the end of the month in which he receives such directions.
- No opportunity of being heard will be provided to the assessee during this time. If the assessee does not file any objections against the draft order within the prescribed period of 30 days or if he accepts the draft order, then the assessing officer is required to complete his assessment within **1 month** from the end of the month where either such 30-day period ends or assessee accepts the draft order, as applicable.





THANK YOU!