SECTION 240 OF THE INCOME TAX ACT

Refund on appeal, etc.

240. Where, as a result of any order passed in appeal or other proceeding under this Act, refund of any amount becomes due to the assessee, the [Assessing] Officer shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf:

[**Provided** that where, by the order aforesaid,—

(*a*) an assessment is set aside or cancelled and an order of fresh assessment is directed to be made, the refund, if any, shall become due only on the making of such fresh assessment;

(*b*) the assessment is annulled, the refund shall become due only of the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee.]

1. **In order to protect the interest of assessee the above Section is introduced in the Income Tax Act which casts a duty and obligation on the Assessing Officer to refund the amount due to the assessee on account of the deletion of additions and revision of demand automatically and even without the assessee applying for the same. In order to process the refund, the Assessing Officer is required to first pass an Order Giving Effect (OGE) for the reliefs secured by the assessee and issue a fresh Demand Notice u/s 156 of the I.T. Act and disclose therein the refund due to the assessee and arrange to pay the same. In case of Mehtas, such refunds are not offered in violation of Sec.240 of the I.T. Act by not issuing the OGEs and revised Demand Notices and by not offering the refunds at all for several years together so as to illegally enjoy the huge amounts already collected by the department.**
2. **In case of Mehtas, the entire demands towards tax of Rs.3285.46 Crores have been recovered by the I.T. department acting in collusion with the Custodian by misrepresenting before Hon'ble Courts that the assessment orders passed by the department are legal and valid and therefore its demands should be fully met. The Hon'ble Supreme Court has laid down the law in the case of Harshad Shantilal Mehta Vs Custodian reported as (1998) 5 SCC 1 that so far as "Taxes Due" as used in Sec.11(2)(a) of the Torts Act, 1992 the same would represent and cover only those demands of department which are raised in accordance with law and which have become final and binding on the assessee. It is further laid down that only at the stage of final distribution u/s 11(2) of the Torts Act the valid and binding demands of the I.T. department will be reckoned but yet under adhoc and interim arrangement the above large amount of Rs.3285.46 Crores have been released to the I.T. department on a condition that as and when the Hon'ble Court orders the department to bring back the amounts the same will be brought back within one month together with stipulated rate of interest or at such rates and on such conditions as may be stipulated by the Hon'ble Courts. These amounts are released upon execution of undertaking to bring back the amounts on above terms which has been executed by the Secretary, Finance Department, Government of India. While as the demands were raised the release of above amounts were sought by the I.T. department but when the demands are deleted and reduced the department has not been coming forward to return the monies to the Custodian and in this manner has deeply affected the functioning of the Hon'ble Special Court and defeated the objects of the Torts Act now for past 30 years.**
3. **In the above manner, the I.T. department has violated the provisions of the Torts Act, the law laid down by Hon'ble Supreme Court thereunder, the specific orders passed by Hon'ble Special Court and Hon'ble Supreme Court for releasing of monies to the department and the undertakings given by the Government as above under the adhoc and interim arrangement.**
4. **This is besides the huge suffering caused to Mehtas by the continued attachment of their assets for past 30 years and losses of Rs.20,677.28 Crores suffered by them due to illegal, coercive and premature sale of their investments in blue chip companies only to meet patently false and illegal claims of the I.T. department which were extremely high-pitched on the very face of it.**

SECTION 220 OF THE INCOME - TAX ACT, 1961 - COLLECTION AND RECOVERY OF TAX - WHEN TAX PAYABLE AND WHEN ASSESSEE DEEMED IN DEFAULT - INCOME DETERMINED ON ASSESSMENT WAS SUBSTANTIALLY HIGHER THAN RETURNED INCOME - WHETHER COLLECTION OF TAX IN DISPUTE IS TO BE HELD IN ABEYANCE TILL DECISION ON APPEAL

INSTRUCTION : NO. 96 [F. NO. 1/6/69-ITCC], DATED 21-8-1969

1. One of the points that came up for consideration in the 8th meeting of the Informal Consultative Committee was that income-tax assessments were arbitrarily pitched at high figures and that the collection of disputed demands as a result thereof was also not stayed in spite of the specific provision in the matter in section 220(6).

2. The then Deputy Prime Minister had observed as under :

> ". . . where the income determined on assessment was substantially higher than the returned income, say, twice the latter amount or more, the collection of the tax in dispute should be held in abeyance till the decision on the appeals, provided there were no lapse on the part of the assessee."

3. The Board desire that the above observations may be brought to the notice of all the Income-tax Officers working under you and the powers of stay of recovery in such cases up to the stage of first appeal may be exercised by the Inspecting Assistant Commissioner/Commissioner of Income-tax.

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SECTION 143 OF THE INCOME - TAX ACT, 1961 - ASSESSMENT - GENERAL - AVOIDANCE OF OVER-PITCHED ASSESSMENT

INSTRUCTION NO. 767, DATED 4-10-1974

1. Recently, a case has come to the notice of the Board where an addition of Rs. 5.64 lakhs made by the Income-tax Officer to the taxable income which was computed at Rs. 6 lakhs. The Appellate Assistant Commissioner allowed a reduction of Rs. 5.56 lakhs. This is not a solitary case of its type. It is illustrative of a widespread tendency on the part of the Income-tax Officers to make unrealistic or overpitched assessments, quite often *ex parte,* especially in Central/Special Circles, without :

(*a*) making requisite enquiries ;
(*b*) bringing on record sufficient evidence in support of the additions made ;
(*c*) confronting the assessee with the material collected by them ; and
(*d*) affording a reasonable opportunity to the assessee to rebut the material and explain his case.

Consequently, the assessments are either slashed in appeal or are set aside. The tendency to allow assessments in cases requiring intensive investigation to drag on till the end of the year and complete them when they are about to become barred by limitation, by making heavy additions of flimsy grounds is equally widespread. It is further noticed that in cases where assessments are made *ex parte,* applicants under section 146 remain undisposed of for a long time.

2. Such overpitched assessments have been the target of adverse criticism by, *inter alia,* Parliamentary Committees. The throw up a host of problems like inflation of demands and generation of unnecessary and unproductive work.

3. The necessity of curbing the tendency on the part of the Income-tax Officers to make high-pitched assessments and raise heavy uncollectable demands has been emphasised by the Board from time to time. Despite these instructions, the tendency has not been checkmated. The Board, therefore, desire that you should once again impress upon the Income-tax Officers in your charge to avoid making such type of assessments. You and your Inspecting Assistant Commissioners should periodically review the statistics regarding the number of *ex parte* assessments made and demand raised therein as also statistics of application under section 146 lying undisposed of [CBDT F.No. 404/244/73-ITCC, dated the 4th October, 1974].

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F. No. 279/Misc./52/2014-(ITJ)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
* * * * * * * * * * * * * * * * * * *

New Delhi the 7th November, 2014

OFFICE MEMORANDUM

Sub: Further steps towards a non-adversarial tax regime-reg.

On several occasions the Finance Minister has emphasised the need for furthering a non-adversarial tax regime. A non-adversarial tax regime cannot be achieved without concerted endeavour at each level, especially at levels where the public interaction is high. Though the Central Board of Direct Taxes (CBDT) has issued instructions from time to time on some of these issues, there is a need for consolidation of earlier instructions and issuance of further directions in this regard. Accordingly, CBDT hereby directs that the officials of the Income-tax Department must adhere to the following guidelines for achieving such objective:

i. Letter dated 21.08.2014 of Chairman, CBDT on cleanliness and punctuality should be implemented in letter and spirit as these are the basic requirements of an efficient and taxpayer centric organisation.

ii. Any appointment given to the public must be honoured and such appointments should not be cancelled or postponed without any unavoidable reason, especially when the assessee/representative is willing to attend.

iii. Despite less than one percent cases being selected for scrutiny assessment, this area of work continues to remain in focus where the tax administration is questioned as adversarial. The selection of cases under Computer Assisted Scrutiny Selection has resolved the issue of subjectivity in selection of cases for scrutiny. However, the process of scrutiny involving long and non-specific questionnaires, the nature of additions made and the high-pitched assessments without proper basis continue to attract adverse attention. Instruction No. 6/2009 entrusted a responsibility on each Range Head to ensure improvement in quality of assessments by issuing directions under section 144A of the Act. There is a need to follow the said Instruction in letter and spirit and accordingly, the Range Heads are required to ensure that frivolous additions or high-pitched assessments without proper basis are not made. The Principal Commissioners of Income-tax/ Commissioners of Income-tax are required to supervise the work of their subordinates to ensure due discharge of these functions.

iv. Instruction No. 15 of 2008 dated 04.11.2008 provides for review of scrutiny assessment orders by the supervising officers on a quarterly basis. Instruction No. 16 of 2008 dated 4.11.2008 lays down the procedure for Inspection of work of Assessing Officers, Tax Recovery Officers, Range Offices and Commissioners of Income-tax (Appeals). These

instructions are issued with the overall aim of capacity building and improving quality of work. Supervisory authorities are required to ensure that these instructions are duly followed.

v. Instruction No. 7 of 2014 dated 26.09.2014 clarifies that ordinarily in scrutiny cases selected on the basis of AIR/CIB/26AS information, the scrutiny shall be limited to that information. Wider scrutiny would be possible only with the sanction of Principal Commissioner of Income-tax/ Commissioner of Income-tax in specified cases and under the monitoring of the Range Head. (Such cases form 25-30% of the total scrutiny basket, thus limiting the cases of full scrutiny).

vi. Withholding of refunds due to mismatch of TDS data has been sought to be remedied through Instruction No. 5 of 2013 dated 08.07.2013 which provides for grant of credit on the basis of evidence submitted by the assessee. This Instruction must be followed scrupulously.

vii. Instruction No. 1914 of 1993 dealing with recovery of demand, stay of demand and grant of instalments has stood the test of time and is equally relevant today. Same is reiterated for implementation in deserving cases. Measures for recovery of tax should be subject to the said Instruction.

viii. In cases of remand, the Commissioners of Income-tax (Appeals) should specify the aspect which needs to be verified. The practice of forwarding the entire documents/submission of the assessee for comments of the Assessing Officers should cease. Assessing Officers will be required to submit a remand report only in cases where the remand is on a specific matter.

ix. Threshold limits have been set for appeals to ITAT, High Courts and Supreme Court at Rs. 4 lakhs, Rs. 10 lakhs and Rs. 25 lakhs, respectively. This, however, does not imply that appeals above these amounts have to be necessarily filed. Where the tax effect is above these amounts, the officer concerned is enjoined with the duty to ensure that the same is filed only if it is feasible to so do on merits of the case.

x. A review of the proposals for filing SLPs reveals that in most of the cases, the decision to file a reference before the High Court itself was not in order. No substantial question of law existed or the question of law was not correctly drafted. Hence, in stations having more than one Chief Commissioner of Income-tax (CCIT) the decision to file a reference before the High Court will be taken by two CCsIT including the CCIT in whose jurisdiction the matter lies. The Principal CCIT/ CCIT (CCA) concerned may issue directions for pairing of CCsIT for this purpose. In case of disagreement between the two CCsIT, the matter will be referred to the Principal CCIT/ CCIT (CCA). For references in the jurisdiction of the Principal CCIT/ CCIT (CCA), in case of disagreement, the matter will be referred to the CCIT-II.

xi. Any regime where taxpayers' grievances are not attended to in time may be considered adversarial. Time limits have been set out for their disposal under Citizens' Charter, CPGRAMS, etc.. However, the pendency reflects poorly on the monitoring effort. All the supervisory authorities are directed to ensure that the grievances are disposed off within the specified time period.

xii. The issue of summons without adequate caution and due application of mind has caused concern to the Board. Supervisory authorities have to ensure that the summons are issued only in deserving cases. Summons should also clarify if the person has been called as a witness or in his own case, and the matter for which he has been called.

2. Officers and staff at all levels are advised to follow the above instructions scrupulously. Non adherence to these instructions will be viewed very seriously and disciplinary action initiated.

(Priyanka Singh)
(OSD) ITJ
CBDT

To

All Principal Chief Commissioners of Income-tax/Directors General of Income-tax

F.No.279/Misc./141/2015-ITJ
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
Room No.276, Samrat Hotel, New Delhi
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Dated the 7th October, 2015

To,

All Principal Chief Commissioners of Income Tax
All Director Generals of Income Tax

Sub:- Monitoring of timely effect to CIT(A) order – reg.

Sir/Madam,

Instruction No.08 of 2011 contains timelines for filing appeals before the ITAT and giving effect to the order of CIT(A). Even while the Department seeks to implement a non-adversarial regime, grievances are being received on account of delays in giving effect to the orders of CIT(A).

2. Para 4 of Instruction No.8 of 2011on Appeal Effect and Scrutiny Report states:

i. On receipt of the order of the CIT(A), the AO shall give appeal effect promptly and properly. The Range Head Shall monitor correctness and timely appeal effect in respect or orders of CIT(A).
ii. Any pendency in regard to the appeal effect beyond one month shall be reported by the Range Head to the CIT in the DO reporting monthly activities of the Range, along with reasons for the delay.
iii. With a view to provide relevant inputs to the decision making authority for filing appeals to ITAT, a format for scrutiny report is prescribed herewith at Annexure-II.
iv. In respect of appeals decided in favour of revenue, the AO shall submit only Part-I of the proforma in Annexure-II to the Range Head and there will be no need to fill in other parts of the proforma in such cases.

Annexure-I requires the scrutiny report to be submitted within 30 days after giving appeal effect. Part-I of Annexure-II is required to be filled in case of all appeals and includes the date of receipt of CIT(A) order in CIT office as well as the date of appeal effect.

3. Whereas, the Instruction provides for adequate procedural control, the implementation of the same in the field has been found wanting. Pr. CsIT are directed to ensure that Range Heads report the no. of appeals pending over 30 days for want of appeal effect in their D.O. letters and to enquire into the cases of delay and expedite the same. Pr. CCsIT/DGsIT/CCsIT must attend to this grievance urgently since it reflects a lack of monitoring and adherence to the Instruction of the Board.

4. This issues with the approval of Member (A&J), CBDT.

(D.S. Chaudhry)
Commissioner of Income Tax(A&J)
Telefax: 26882639

Copy to:- Data Base Cell for placing on irsofficersonline.gov.in.

SECTION 143 OF THE INCOME-TAX ACT, 1961 - ASSESSMENT - GENERAL - CONSTITUTION OF LOCAL COMMITTEES TO DEAL WITH TAXPAYERS GRIEVANCES FROM HIGH-PITCHED SCRUTINY ASSESSMENT

INSTRUCTION NO.17/2015 [F.NO.225/290/2015-ITA-II], DATED 9-11-2015

Board has consistently been advising the field authorities to be fair, objective and rational while framing scrutiny assessment orders. Role of supervisory authorities in this regard, has also been highlighted by the Board from time to time. It has, however, been brought to the notice of Board that the tendency to frame high-pitched and unreasonable assessment orders is still persisting due to which grievances are being raised by the taxpayers. Such grievances not only reflect harassment of taxpayers but also lead to generation of unproductive work for Department as well as Appellate Authorities.

2. In view of the above, a need has been felt to lay down an institutional mechanism to quickly resolve the taxpayers' grievances arising on account of high-pitched and unreasonable additions made by the Assessing Officers. CBDT has decided that following measures may be taken in the field formation for handling taxpayers' grievances arising from high-pitched scrutiny assessment orders -

(*i*) Local Committees to deal with Taxpayers Grievances from high-pitched scrutiny assessment ('Local Committee') are required to be constituted in each Pr. CCIT region across the country. Ideally, the Local Committee may consist of three members of Pr. CIT/CIT rank. The members can be selected from the pool of officers posted as Pr. CsIT, CIT (Judicial) and CsIT (DR), ITAT at the station where the Headquarters of the respective Pr. CCIT is located. The Addl. CIT (Headquarters), to such Pr. CCIT would act as a Member - Secretary to the Local Committee. The senior most Member would be designated as the Chairman of the Committee.

(*ii*) The Local Committees so constituted would deal with the grievance petitions related to high-pitched scrutiny assessments completed within the Jurisdiction of the respective Pr. CCIT. These Committees would also handle the grievances pertaining to Central Charges located under the territorial jurisdiction of the Pr. CCIT concerned.

(*iii*) Similar committees would also be setup in the charges of Pr. CCIT (Intl. Tax.) and CCIT (Exemptions). In these committees, the Officers working as CsIT (International Taxation/Transfer Pricing) and CsIT (Exemptions) respectively could be selected as Members. The Addl. CIT (Headquarters) to Pr. CCIT (Intl Tax.)/CCIT (Exemptions) would act as a Member - Secretary to these Local Committees.

(*iv*) The Committees may co-opt other members, if necessary.

(*v*) A grievance petition received by the Local Committee would be immediately acknowledged and separate record would be maintained for dealing with such petitions.

(*vi*) It shall be the endeavor of the Local Committee to dispose of each grievance petition within two months from the end of the month in which such Grievance Petition is received by it.

(*vii*) The grievance petition received by the Local Committee would be examined by it to ascertain whether there is a prima-facie case of high-pitched assessment, non-observance of principles of natural justice, non-application of mind, gross negligence or lack of involvement of assessing officer. The Committee would ascertain whether the addition made in assessment order are not backed by any sound reason or logic, the provisions of law have grossly been misinterpreted or obvious and well established facts on records have out rightly been ignored. The Committee would also take into consideration whether the principles of natural justice have been followed by the assessing officer.

(*viii*) If it is established that unreasonable and high-pitched additions have been made by the assessing officer, a report would be sent to the Pr. CCIT/Pr. CCIT (Intl Tax.)/CCIT (Exemptions), as the case may be, by the Local Committee. The Pr. CCIT/CCIT, after considering the views of the committee, would take suitable administrative action, wherever required. Further, departmental position as determined by the Local Committee in such cases would be appropriately presented before the Appellate Authorities so that litigation is curtailed.

(*ix*) It is, however, clarified that the purpose of constitution of Local Committee is to effectively and efficiently deal with the genuine grievances of taxpayers and help in supporting an environment where assessment orders are passed in a fair and reasonable manner. The Local Committee, in no way, can be considered to be an alternative /additional appellate channel.

3. The Board has emphasized that the task of constitution of Local Committees be finalized in this month itself and a report on compliance may be sent by the Pr. CCsIT/Pr. CCIT (Intl.Tax.)/CCIT(Exemptions) to their respective Zonal Members with a copy to Member (IT), CBDT. It has also been desired that the outcome of Local Committee's work may be highlighted in each monthly DOs required to be sent to the Zonal Members.

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F.No.404/72/93-ITCC
Government of India
Ministry of Finance
Central Board of Direct Taxes (CBDT)

New Delhi, Dated: 29th February, 2016

Office Memorandum

Sub: Partial modification of Instruction No. 1914 dated 21.03.1996 to provide for guidelines for stay of demand at the first appeal stage.

Instruction No. 1914 dated 21.03.1996 contains guidelines issued by the Board regarding procedure to be followed for recovery of outstanding demand, including procedure for grant of stay of demand.

2. In part 'C' of the Instruction, it has been prescribed that a demand will be stayed only if there are valid reasons for doing so and that mere filing of an appeal against the assessment order will not be a sufficient reason to stay the recovery of demand. It has been further prescribed that while granting stay, the field officers may require the assessee to offer a suitable security (bank guarantee, etc.) and/ or require the assessee to pay a reasonable amount in lump sum or in instalments.

3. It has been reported that the field authorities often insist on payment of a very high proportion of the disputed demand before granting stay of the balance demand. This often results in hardship for the taxpayers seeking stay of demand.

4. In order to streamline the process of grant of stay and standardize the quantum of lump sum payment required to be made by the assessee as a pre-condition for stay of demand disputed before CIT (A), the following modified guidelines are being issued in partial modification of Instruction No. 1914:

(A) In a case where the outstanding demand is disputed before CIT (A), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand, unless the case falls in the category discussed in para (B) hereunder.

(B) In a situation where,

(a) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount higher than 15% is warranted (e.g. in a case where addition on the same issue has been confirmed by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of Revenue or addition is based on credible evidence collected in a search or survey operation, etc.) or,

(b) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount lower than 15% is warranted (e.g. in a case where addition on the same issue has been deleted by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of the assessee, etc.),

the assessing officer shall refer the matter to the administrative Pr. CIT/ CIT, who after considering all relevant facts shall decide the quantum/ proportion of demand to be paid by the assessee as lump sum payment for granting a stay of the balance demand.

(C) In a case where stay of demand is granted by the assessing officer on payment of 15% of the disputed demand and the assessee is still aggrieved, he may approach the jurisdictional administrative Pr. CIT/ CIT for a review of the decision of the assessing officer.

(D) The assessing officer shall dispose of a stay petition within 2 weeks of filing of the petition. If a reference has been made to Pr. CIT/ CIT under para 4 (B) above or a review petition has been filed by the assessee under para 4 (C) above, the same shall also be disposed of by the Pr. CIT/ CIT within 2 weeks of the assessing officer making such reference or the assessee filing such review, as the case may be.

(E) In granting stay, the Assessing Officer may impose such conditions as he may think fit. He may, inter alia,-

(i) require an undertaking from the assessee that he will cooperate in the early disposal of appeal failing which the stay order will be cancelled;

(ii) reserve the right to review the order passed after expiry of reasonable period (say 6 months) or if the assessee has not cooperated in the early disposal of appeal, or where a subsequent pronouncement by a higher appellate authority or court alters the above situations;

(iii) reserve the right to adjust refunds arising, if any, against the demand, to the extent of the amount required for granting stay and subject to the provisions of section 245.

5. These instructions/ guidelines may be immediately brought to the notice of all officers working in your jurisdiction for proper compliance.

(A.K. Sinha) 29/2/16
Director (ITCC)

All Principal Chief Commissioners/ Principal Directors General of Income Tax/ Chief Commissioners/ Directors General of Income Tax.

Copy to:

1. Chairperson and all Members of CBDT.
2. All Joint Secretaries and Commissioners in CBDT.
3. Pr. DGIT (Systems), Pr. DGIT (NADT) and Pr. DGIT (Admin.).
4. Additional Directors General (Recovery) and (PR, PP&OL).
5. Web Managers of irsofficersonline.gov.in and incometaxindia.gov.in for placing on the respective portal.
6. Office of Comptroller & Auditor General of India (30 copies).