

FOR DEPARTMENTAL USE ONLY



Manual of Office Procedure

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**DIRECTORATE OF INCOME TAX
(ORGANISATION & MANAGEMENT SERVICES)
CENTRAL BOARD OF DIRECT TAXES
DEPARTMENT OF REVENUE
GOVERNMENT OF INDIA**

INDEX

| <u>Chapter</u> <u>No.</u> | <u>Name of the Chapter</u> | <u>Page Number</u> |
|--|---|---------------------------|
| | Vision, Mission and Values | |
| 1 | Assessment Procedure (General) | 3 |
| 2 | Assessment Procedure (Scrutiny) | 25 |
| 3 | Assessment Procedure (Search and Seizure) | 43 |
| 4 | Taxation of Non-Residents | 47 |
| 5 | Special Procedure relating to Trust and other Institutions | 54 |
| 6 | Issue and service of notices | 71 |
| 7 | Widening of Tax Base | 75 |
| 8 | Central Information Branches | 82 |
| 9 | Pre-Assessment Collection Procedure | 97 |
| 10 | Post-Assessment Collection Procedure | 128 |
| 11 | Refunds | 159 |
| 12 | Recovery | 185 |
| 13 | Write-off and scaling down arrear demands | 174 |
| 14 | Accounting Procedure | 191 |
| 15 | Interest | 227 |
| 16 | Penalties | 234 |
| 17 | Prosecution | 245 |
| 18 | Appeals and Revision | 257 |
| | Citizens' Charter | |

OUR VISION

The Department will be recognised as a professional organisation, collecting resources efficiently, considerate towards its clients, adapting and improving and promoting voluntary compliance.

OUR MISSION

To promote compliance with our direct tax laws, through caring taxpayer service and strict enforcement and thus realize maximum resources for the Nation.

OUR VALUES

Integrity of conduct,
Dedication to our duties and values,
Professionalism in our work,
Attitude of service to our clients and Fostering mutual confidence.

Chapter- 1

ASSESSMENT PROCEDURE (GENERAL)

The Income Tax Department switched over to a computerised mode of processing of returns and the related actions using AST software at stations which are already on the network. At stations which are not yet on the network Tax Management System (TMS) software on stand alone computers is to be used till such time as they are brought on the network. For computerised processing of returns etc., it is necessary to understand the scheme and the basic operation of the customised application software developed by the department for this purpose.

SECTION - 1 : USING DEPARTMENTAL APPLICATION SOFTWARE

1.1 Application software : In order to ensure uniformity of application software, and consistency and integrity of data as well as the software, the following customised application software have been developed which are relevant for discharging assessment functions in a fully computerised environment :-

- i. Manpower Management System (MMS)
- ii. Initial PAN Allotment System (IPAN)
- iii. Assessee Information System (AIS)
- iv. Tax Accounting System (TAS)
- v. Assessment Information System (AST)
- vi. Individual Running Ledger Account System (IRLA)
- vii. Judicial Reference System (JRS).

These are integrated application systems (except JRS, which is an off-line system) which can be accessed through any computer which is on the network.

1.2 Of these, the Tax Accounting System (TAS) relating to processing of challans, is implemented centrally in the Computer Centres. The Judicial Reference System, containing judicial decisions of high Courts, Supreme Court, CBDT Circulars and Instructions etc. is supplied to all users on CDs called TAEXPERT every Quarter.

1.3 The Manpower Management System is used to identify each employee of the Department by a uniquely generated employee number, before he is permitted to work on the Departmental Application Software. Details of MMS are given in the chapter relating to Office Management.

SECTION - 2 : PERMANENT ACCOUNT NUMBER

2.1 Permanent Account Number is basically a method of identifying a taxpayer on the computer system through a unique All-India number so that all information relating to that taxpayer, e.g. taxes paid, refunds issued, outstanding arrears, income disclosed, transactions entered etc. can be linked to him through the computer system. Processing of return of an assessee or other actions on AST software is not possible unless PAN has been allotted to him and is linked to the AO code of the Assessing Officer who is trying to process that return.

2.2 The old Series of Permanent Account Number : Earlier the assesseees of the Income-tax Department were identified by their General Index Register (GIR) Number. This was essentially a manual system. The GIR number was unique only within an Assessing Officers Ward / Circle and not through out the country. To overcome these shortcomings, Permanent Account Number (old series) was first introduced in 1972 and made statutory u/s 139A of the Act w.e.f. 1st April, 1976. Blocks of Permanent Account Numbers were allotted to each Commissioner Charge by the Board. The Commissioners made the allotment of Permanent Account Numbers to assesseees under various Assessing Officers in their charge from within the Block allotted to them. Initially the allotment was made manually. Computerised allotment was introduced through 36 computer centres covering the entire country in 1985. However, the PAN under old series failed to meet the desired objectives for following reasons :-

- i. No database was maintained and there was no check to avoid allotment of multiple PANs to a taxpayer;
- ii. The data captured under the computerised system was not structured and was limited to very few parameters - Name, Address, Status and designation of A.O.;
- iii. The allotment of PAN was not centralised - an assessee could apply for allotment of PAN in different centres and get a distinct PAN from each centre, due to which all India uniqueness could not be achieved. ;
- iv. PAN was not permanent as jurisdiction of the assessee was part of the PAN and, therefore, was prone to changes with the change in jurisdiction;

2.3 Permanent Account Number under new series : Since a taxpayer can make payment of taxes or have monetary transaction anywhere in India, a unique all India taxpayer identification Number is essential for linking and processing transactions / documents relating to a taxpayer on computers, as also for data matching. Therefore, a new series of Permanent Account Number was devised which took care of the above limitations. Section 139A of the Act was amended w.e.f. 1.7.95 to enable allotment of PAN under new series to persons residing in areas notified by the Board. Applications for allotment of PAN under new series was made mandatory in Delhi, Mumbai and Chennai w.e.f. 1.6.96, and in rest of the country w.e.f. 11.2.98.

2.4 Objectives sought : PAN was introduced keeping in view the following objectives :-

- i. to facilitate linking of various documents and information, including payment of taxes, assessment, tax demand, arrears etc. relating to an assessee.
- ii. to facilitate easy retrieval of information.
- iii. to facilitate matching of information relating to investment, raising of loans and other business activities of taxpayers collected through various sources, both internal as well as external, for widening of tax base and detecting and combating tax evasion through non-intrusive means.

2.5.1 Structure of the new series of PAN : The Permanent Account Number under new series is based on following constant permanent parameters of a taxpayer and uses Phonetic Soundex code algorithm to ensure uniqueness :-

- i. Full name of the taxpayer;
- ii. Date of birth / Date of Incorporation;
- iii. Status;
- iv. Gender in case of individuals; and
- v. Father's name in case of individuals (including in the cases of married ladies)

These five fields are called core fields, without which PAN can not be allotted.

2.5.2 The PAN under the new series is allotted centrally by a customised application system (IPAN / AIS) for all-India uniqueness. The system automatically generates a 10 character PAN using the information in above five core fields. PAN has the following structure :-

Structure of PAN

| | | | | |
|------|---|------|---|---|
| AAAS | A | 1234 | A | |
| | | | | _____Alphabetic Check digit |
| | | | | _____Sequential Number running from 0001 to 9999 |
| | | | | |
| | | | | _____First character of assessee's Last Name/ Surname |
| | | | | _____Status |
| | | | | _____Alphabetic series running from AAA to ZZZ |

The phonetic PAN (PPAN) is a new concept which helps prevent allotment of more than one PAN to assessees with same / similar names. AIS works out the PPAN based on some important key fields of an assessee using an internal algorithm. At the time of PAN allotment, the PPAN of the assessee is compared with the PPANs of all the assessees to whom PAN has been allotted all over the nation. If a matching PPAN is detected, a warning is given to the user and a duplicate PPAN report is generated. In such cases, a new PAN can only be allotted if the Assessing Officer chooses to override the duplicate PPAN detection.

A unique PAN can be allotted under this system to 17 crore taxpayers under each alphabet under each status (i.e. individual, HUF, Firm, Company, Trusts, Body of Individuals, Association of Persons etc.)

2.6 Jurisdiction : The Permanent Account Number/ Card does not by itself indicate jurisdiction, as jurisdiction gets changed frequently and is not a permanent information. However, in the database each PAN is linked to a 10 digit Assessing Officer code indicating the jurisdiction of the taxpayer. This AO code defines the Chief Commissioner Region, the Commissioner's Charge, the Joint Commissioner Range, and the place and designation of the Assessing Officer(s). Any authorised user of the Income Tax Application systems can, by making a query on any PC on the Income Tax network find out the Assessing Officer for a given PAN.

2.7 Who is required to apply for Permanent Account Number : Under Section 139A(1) of the Income-tax Act, 1961 following categories of persons are expected to apply and obtain Permanent Account Number :-

- i. Persons who are already assessed or assessable to Income-tax;
- ii. Persons who are carrying on any business or profession where total sales / turnover / gross receipts are or is likely to exceed Rs. 5,00,000/- in any previous years;
- iii. Trusts;
- iv. Any class or classes of persons by whom tax is payable under the Income-tax Act or any tax or duty is payable under any other law for the time being in force including importers and exporters whether any tax is payable by them or not .

The Assessing Officer can also allot Permanent Account Number to any other person by whom tax is payable. Any other person can also apply to the Assessing Officer for allotment of a Permanent Account Number. All assesseees who had earlier been allotted a Permanent Account Number were expected to apply for Permanent Account Number under new series, so that a structured data base COULD be set up in respect of all persons having Permanent Account Number under new series.

2.8 Coverage of PAN : Permanent Account Number covers individuals, HUF, partnerships, firms, companies, body of individuals, trusts, and all other persons who are assessable to tax and /or come under the purview of Section 139A. PAN under the new series is allotted on the basis of Form 49A filled up by the applicants. Section 139A provides that no person can hold more than one PAN.

2.9 Allotment of PAN

2.9.1 Bulk allotment of PAN in batch process through IPAN : PAN can be allotted in batch mode using IPAN system centrally through Computer Centres. It can also be allotted on-line by Assessing Officers using AIS system from their computers on the network. In Batch mode, applications in Form 49A for allotment of PAN are received by the Assessing Officers. After basic verification, these are sent to the Computer Centres where data is entered on computers using the IPAN application system, and is then transferred to the National Computer Centre, Delhi through high speed dedicated leased data circuits. The National Computer Centre checks the taxpayer database and allots a new PAN if the applicant has not been allotted such a number earlier. The PANs thus allotted are transmitted back to the concerned Computer Centre which prints the allotment letters / PAN Cards and issues the same to the taxpayers. This process is adopted for :-

- i. initial bulk allotment of PAN, and also
- ii. for stations where network is not yet operational.
- iii. PAN allotment during peak periods e.g. at time of due dates for returns.
- iv. PAN allotment when the network link between the AO's building and the Computer Centre, or between the Computer Centre and NCC is not available for any appreciable amount of time.

2.9.2 On-line allotment through AIS : On-line allotment of PAN by the AOs themselves is made using the AIS application system at stations where network has become functional. Persons applying for PAN have to file applications in Form 49A with their Assessing Officer. The A.O.

or his staff enters the details in Form 49A on the computer using the AIS application. As soon as data entered on the A.O.'s computer is transmitted to the National Computer Centre across high speed leased lines, PAN is allotted from NCC, and the number is transmitted back to the A.O.'s computer. The A.O. can then generate the intimation letter on his computer. Thereafter the A.O. must send the PAN application form and photograph of the taxpayer to the Computer Centre for printing and issue of the PAN card to the latter.

2.9.3 Core deficiency cases : Allotment of PAN is made on the basis of certain constant parameters/ details of the person which are permanent and ensure uniqueness. In case any of the five core fields are incorrectly or incompletely filled PAN can not be allotted. In such cases deficiency letters are sent to the applicants for obtaining the deficient information, and only after receipt of replies from the applicants can a PAN be allotted.

2.9.4 Correction / change in PAN data / address etc. : Any modification in core data relating to the name of the taxpayer, father's name, date of birth / incorporation can be made, based on documentary proof, by the Assessing Officer in case the PAN, is in AIS, In cases in IPAN database, such modification can be made by the data base administrator of the Computer Centre. The staff of the Assessing Officer can, however, modify details in other columns including address. The details of a PAN can be verified from any of the PCs on the Income-tax network.

2.9.5 Recording of events : As the name indicates the number is permanent through out the life of a taxpayer. The system provides for recording of events, such as :-

- i. the death of an individual;
- ii. partition of a Hindu Undivided Family;
- iii. dissolution of a partnership firm;
- iv. Winding up, amalgamation, merger of companies etc.

2.10 PAN Cards

2.10.1 All individual taxpayers are issued PAN cards with their Permanent Account Number, name, father's name, date of birth, photograph and signature. All other categories of taxpayers are issued PAN Card without photograph and signature. The photograph and signature of the applicant are scanned stored in the Computer centre. PAN cards are printed and issued from the Computer Centre. Only the permanent details of the persons are printed on the PAN cards. PAN Cards for Individuals contain :-

- i. PAN (with built in status of the assessee and check alphabet)
- ii. Full name
- iii. Full name of father
- iv. Date of birth
- v. Photograph
- vi. Signature

PAN cards for persons other than individuals contain :-

- a. PAN (with built in status of the assessee and check alphabet)
- b. Full Name
- c. Date of Incorporation

2.10.2 In the case of bulk allotment, before a PAN card is printed by the Computer Centres, all the information which is printed on the PAN card, namely, full name, father's name, date of birth/incorporation etc., are checked with reference to the application filed in Form 49A, through a process known "PAN preview".

2.10.3 Address is not printed on the PAN Card as the same can change and is not permanent. Names of partners, directors, members of HUF are not printed on the PAN cards as it is not possible to print a large numbers of names on one PAN card. The partners / directors / members can, however, be issued PAN cards in their individual capacity.

2.11 Mandatory quoting of PAN

2.11.1 Under Section 139A (5) (a)/ (b) persons who have been allotted a PAN are required to quote the same on their returns of income, challans for payment of taxes and all correspondence with the Income-tax department.

2.11.2 Under Section 139A (5)(c) the Central Board of Direct Taxes has powers to notify transactions where quoting of PAN would be compulsory. Rule 114B specifies the transactions where quoting of PAN is mandatory by the concerned persons.

SECTION - 3: RECEIPT OF RETURNS AND PREPARATION OF RETURN RECEIPT REGISTER

3.1 Receipt of returns and issue of acknowledgment sheets is a manual process. The main departmental application software, namely, AIS, TAS, AST, TDS and CIB identify a taxpayer by his PAN. Therefore, it is essential for full computerisation that PAN is allotted to all taxpayers and that the same is quoted on all documents whether submitted by taxpayer (such as returns, challans, TDS Certificate etc.) or issued by the Department. It is necessary to ensure at the time of filing of returns at the receipt counter that returns carry the correct PAN of the assessee as required u/s 139 A (5) (a) of the Act. Incorrect quoting of PAN leads to delay in processing of returns on AST. In case of new assessee's application in Form 49A for allotment of PAN should be insisted upon.

3.2 Returns should be received range wise centrally for all A.O.s located in the same building /city if the jurisdiction of A.O.s is concurrent within the range. The range Addl / JCIT should oversee the organisation of receipt counters, allocation of receipt numbers to these counters, preparation of return receipt register either on the AST software or on the Stand alone RRR software and its submission to CIT (CIB) every month, storage of returns in the common record room, and their distribution amongst A.O.s for processing.

3.3 Preparation of Return Receipt Register : It is very important to prepare a return receipt register for monitoring the work of the range and identifying stop filers and non-filers. This can be prepared either on the RRR module of AST software by AOs who are on the network or on the Stand alone RRR software supplied. The range JCITs must ensure that processing of returns is not started without completion of the RRR for the preceding month. Generation of computerised RRR for each Range/AO will eliminate back-dating etc., in receipt of returns and enable the officers to know, plan and organise their work properly.

3.4 RRR software for generating Return Receipt Register : A software called RRR software has been provided which can be used on stand alone PCs for generating return receipt register with minimum data entry. Details of the working of the software may be seen from the User Manual supplied with the software and also on Taexpert CD. The software can also be used where returns of an A.O. or a range are being received at multiple counters. The acknowledgment number is a ten digit numeric field. The first two digits are reserved for identification of the range, the next two for the counter number and last six are the running serial number. Though the serial number and acknowledgment number are self generated, the acknowledgment number can be modified, if needed. It also verifies the accuracy of PAN quoted on the returns by comparing this with the PAN data of that RCC supplied to A.O.s on CDs. However, availability of PAN data is not mandatory for functioning of this software. Names and addresses can be entered where PAN has not been allotted.

3.5 Data capture for generation of computerised RRR : The range Addl./JCITs will ensure that before the returns received above are handed over to A.Os., the following basic data is captured :-

- i. Date of filing (System generated - need not be keyed in)
- ii. Acknowledgment No. (System generated - need not be keyed in)
- iii. Assessment Year (by default)
- iv. PAN (to be entered)
- v. Returned income (to be entered)
- vi. Refund, if any (Optional)
- vii. Type of return (by default)
- viii. Due date (by default)

Of these, items (i), (ii), (iii), (vii) & (viii) come on the system by default and will have to be entered only once. Data relating to PAN (10 characters) and returned income (6-9 characters) will have to be entered in the RRR for each return. The information relating to name/ address can be populated later using PAN database. In cases where PAN is not allotted and only on application in Form 49A is enclosed, information about name and address will also have to be captured in RRR. The information relating to refunds is optional. This data can be captured on RRR. JCITs of Ranges at networked stations, may, however, decide to use RRR of AST to capture the above data. The division of data capture either through RRR software or through the AST software module should be taken by range Addl./ JCIT considering the situation of network in the offices under his Range.

3.6 The software also allows Assessing Officers to prepare a return receipt register in cases where returns have been received at more than one counter. The software can generate the return receipt register for the entire range or for each A.O. with facilities for specifying various criteria like AO, F.Y., date of filing and returned income. The data captured while preparing the return receipt register can be uploaded in AST module to avoid duplication. The software can convert the RRR data into Flat File for direct uploading onto AST software for processing, and on CIB software for identification of non filers or stop filers. It is the responsibility of range Addl. / JCIT to ensure that a range-wise compiled copy of RRR on floppy together with a signed printout is sent by every range to the concerned CIT (CIB) in respect of the returns received during a month by 15th of the following month except for returns received during the month of July for which the same will be sent by 31st of August for generation of the list of stop filers, non-filers and issue notices u/s 142 to these persons within the same financial year.

SECTION - 4 : PROCESSING OF RETURNS ON AST

4.1 The functions that can be performed on AST software are :-

- i. Receiving returns and generating a computerised return receipt register (RRR)
- ii. Processing of returns.
- iii. Regular assessments.
- iv. Rectifications.
- v. Maintenance of details regarding pendency and disposal of appeals.
- vi. Maintenance of details regarding pendency and disposal of penalties.
- vii. Giving effect to the orders passed by the higher authorities.
- viii. Maintaining linkages between various proceedings and orders.
- ix. Generating and posting in IRLA of demands and refunds.
- x. Maintaining details of pendency and disposal of audit objections and prosecution.
- xi. Generating reports and provide on-line queries on assessment data.

AST is mainly a parameter driven system. The parameters can be set assessment year wise by the user. These will support calculation of tax, calculation of interest under various sections, selection of cases for scrutiny, preparation of time barring lists, validations of due date(s), deduction limits etc.

4.2 Receiving returns of income

4.2.1 Returns are received at the counters range wise. It should be ensured that the return carries a PAN of ten characters. In case PAN has not been allotted, application in Form 49A (or its copy) should be insisted upon at the stage of filing of the return. This is a manual process where the TA after receiving the return performs preliminary checking for the enclosures and affixes the stamp for acknowledgment number (running serial number in a specified format), date of filing of return, and range code, in the space provided. The format of acknowledgment number is :< cc nnnnnn >, where, cc = counter number; and nnnnnn = running sequence number within each counter.

4.2.2 This allows the flexibility to have multiple counters in the range. Besides, all the acknowledgment numbers for a range are unique. The member of the staff concerned makes an entry in the RRR for the return received. One copy of the acknowledgment sheet is detached from the return and given to the assessee. Returns are then tied into the bundles of standard size (say 20 returns or as directed by the AO) for storage and processing. Each bundle bears a number in a specified format for easier traceability of the returns to a bundle.

4.2.3 Data is then entered on the system to generate a RRR. This may be done either simultaneously with the filing of returns, or as soon thereafter as possible. Some of the parameters, such as range code, date of filing of return, starting acknowledgment number, assessment year, year of receipt, type of return, etc. are set as defaults while entering data. This saves time by eliminating repetitive data entry.

4.3 Data entry for processing of returns

4.3.1 At present the source documents for processing of return are mainly the acknowledgment sheets - though in some situations some information may have to be captured from the schedules and enclosures. The contents of the acknowledgment sheets are captured in the system by the staff of the AO. Data entry can also be carried out using terminal banks in the range. The system also checks the status of the return filed as in-time, belated or time barred. Data entry of returns without PAN, can be done. However, the system does not allow processing of such returns till PAN is allotted.

4.3.2 If an assessee files his return in a different ward/circle than where he was last assessed, the system generates a list of such cases for an AO for possible transfer of these cases to the concerned AO. If entry of Return Receipt Register has already been done, then the fields already entered will be displayed by the system and they need not be entered again.

4.3.3 During entry of the return, if any totaling error or 'range overflow' (e.g. claim of deduction u/s 80L exceeding Rs. 12000) is detected, the system gives warnings. However, no tax calculation or payment matching is done at this stage. A list of non-filers and notices u/s 142(1), can be generated, once the due date for filing has elapsed and data entry of RRR is complete (or data entry of all acknowledgment sheets is complete).

4.3.4 After the due date for filing of returns has elapsed and data entry of RRR is complete (or data entry of all acknowledgment sheets is complete for a range or an A.O.) list of non-filers and notices u/s 142(1) of the Act, can be generated. Notices u/s 142(1) can also be generated for the following cases:-

- i. any assessee without PAN for whom AO has some third party information.
- ii. assessees who do not have PAN, but for whom tax has been deducted at source (TDS).
- iii. potential assessees based on the information received from Enforcement Information System (EFS) module in surveys u/s 133B, CIB information, etc.

The system verifies and tracks assessee's response to the notices u/s 142(1)/148 of the Act. For each notice u/s 142(1), progress is monitored in terms of PAN allotment and receipt of return. **Processing of returns**

4.4.1 After the data entry from the acknowledgment sheets, the A.O. can carry out the processing of returns. He can also at his option initiate the batch process for generation of 'mismatch report' for the selected bundles. This report gives :-

- i. Range overflow, (e.g. maximum permissible deduction u/s 80L is Rs. 12000, if an assessee claims Rs. 16000 in the return, the system will give range overflow warning).
- ii. Unresolved totaling errors attributable to assessee or staff,
- iii. Tax calculation differences (incorrect calculation of tax and interest), and
- iv. Mismatch of payment (variation between prepaid taxes as per the system and as shown in the return).

In case figures in the acknowledgment sheet mismatch with those in the return then figures in the return should take precedence. The user can print the mismatch report for all cases or for those in which mismatch is found.

4.4.2 The AO's staff or AO himself has to verify and correct any data entry errors.

4.4.3 The AST system is designed to automatically take details of prepaid taxes i.e. advance tax and self-assessment tax from Individual Running Ledger Account (IRLA) of the taxpayer. These entries are automatically transferred from the Tax Accounting System (TAS) to IRLA with PAN as the common link. However, since a large number of assessee's are still not quoting PAN on their challans, such entries do not get transferred from TAS to IRLA and instead remain unclaimed in the suspense table of TAS. The System provides that an A.O. can claim the entries pertaining to his assessee's from the suspense table of TAS, subject to certain verification.

4.4.4 Since claiming of entries of prepaid taxes is a time-consuming and uses up a lot of system and network resources, for the time being and as a purely temporary measure, direct entry of advance tax and self assessment tax payments supported by the copies of challans enclosed with the returns, has been permitted in AST subject to certain overall restrictions. The A.O. has to personally verify and ensure the correctness of these entries.

4.4.5 Similarly, the AST system is designed to automatically take details of TDS from the TDS - IRLA of the deductor. However TDS-IRLA can become functional only when all TDS returns get processed on system using TDS software. Therefore, for the time being and as a purely temporary measure, direct entry of TDS payments by the AO or his staff from the original TDS vouchers enclosed with the return, has been permitted. The A.O. has to personally verify and ensure the correctness of these entries at the time of processing of the returns. Automated credit for TDS payments can be done when TDS module is implemented nation wide.

4.4.6 During processing if a defect is found in the return then the AO can issue a notice u/s 139(9) manually and mark the return as invalid. After the defect is removed by the assessee the AO can mark the return as valid and then process it.

4.4.7 The system calculates tax including tax on incomes to be taxed at special rates (e.g. capital gains), and interest (u/s 234A, 234B, 234C, 244A) at this stage for review. Only the AO can give final approval for the processing of a return. The system calculates tax, interest (u/s 234A, 234B, 234C, 244A), and the net tax payable /refundable and prints intimation sheets, explanatory sheets, challan/ refund vouchers in batch mode at the local printer.

4.4.8 There are several combinations of printed outputs :-

- i. Intimation sheet only
- ii. Intimation sheet and challan (Company)
- iii. Intimation sheet and challan (Non-Company)
- iv. Intimation sheet and refund voucher
- v. Order u/s 154, calculation sheet, demand notice, and challans, etc.
- vi. Others.

4.5 Regular assessment

4.5.1 Selection of cases for scrutiny- Assessment system assists users in selection of cases for scrutiny under the following Sections :-

- i. Regular assessments u/s 143(3) - Parameters in terms of refund limits, income limits, percentage of cases to be randomly selected for an income range, etc. can be predefined for automated selection of cases for scrutiny for an assessment year. In addition, any case as per the Board's instructions, recommendations of investigation wing etc. can be selected by using a general query. Notice u/s 143(2) are generated for these cases. The date of printing of this notice sets the commencement of regular assessment proceeding.
- ii. Best judgment assessments u/s 144 - Specific cases can be identified for assessment u/s 144.
- iii. Income escaping assessment u/s 143 read with 147 - Specific cases can be identified, for reopening for any assessment year. Notice u/s 148 can be generated for these cases.
- iv. Set aside assessments u/s 143 read with 250 or 254 or 263 - Any case which has been set aside (partly or fully) by any higher authority can be selected.

4.5.2 Till the time, notice u/s 143(2) or 148 has not been printed on AST, the case can be removed from the list of cases selected for regular assessment. A list of cases selected for scrutiny for any assessment year can be generated at any time. Hearing and passing of assessment orders is a manual process. Basic details for an assessment order e.g. name, PAN, assessment Year, date of completion of assessment proceeding, section, etc. are captured. The actual assessment order has to be printed on word-processor software. Details of addition to the income

have to be entered in the System. Based on these, calculation of gross tax and any payable interest u/s 234A, 234B, 234C or 244A is made by the AST system. The System maintains complete history of all changes made/ entered at each stage of the proceeding. Outputs like calculation sheet, demand notice, refund voucher /challan can be generated by the AO on the system. The system does not permit any modifications to the figures once outputs are generated. Such modification can be made through rectification order u/s 154 only. Provision has been made to put any proceedings on hold and its subsequent release. This can happen due to writ, SLP, stay by higher authority, etc.

4.6 Demand and refunds : Generation and posting of demands and refund in the Individual Running Ledger (IRLA) system is an important part of the AST system. In the system, demands/ refunds are created under the following heads :-

- i. Regular demand - This is due to order u/s 143(1), 143(3), 143(3) read with 147 and 143(3) read with relevant sections of appeal, revision, rectifications, etc.
- ii. Penalty demands - This is due to penalty orders. Each penalty order leads to separate penalty demand.
- iii. Interest payable u/s 244A - This is computed at creation and subsequent increase/ decrease of demand.
- iv. Interest chargeable u/s 220(2) - This is calculated by Individual Running Ledger Account on receipt of delayed payment but is reworked on increase/ decrease of related demand by AST.

TDS payments entered at the time of processing are posted in IRLA on completion of processing u/s 143(1). Any subsequent changes in IRLA on completion is audit trailed.

4.7 In case of refunds, the user can :-

- i. print refund in favour of the assessee
- ii. print refund fully in favour of department
- iii. print refund in favour of the assessee's representative or representative assessee
- iv. withhold refund generation
- v. split refund into multiple refund vouchers, so as to adjust them with arrears demand e.g. suppose the refund for the current assessment (say A.Y. 02-03) year is Rs. 10,000 and an arrear demand (for say AY 89-90) of Rs. 4,000 is outstanding. At AO's command, the system shall print two refund vouchers- one for Rs. 6,000 in favour of assessee, and the other for Rs. 4000, in favour of Income tax department.

Demands/refunds are posted to IRLA on the AO's final approval. The reprint option of demand notice and challan are also given. Multi-part stationery should be used to keep a copy of all outputs going to the assessee with the department. Although the system calculates interest u/s 234A, 234B, 234C, 244A, the user can modify these under special conditions mentioned in the Act.

4.8 Queries and outputs

4.8.1 AST supports flexible queries on various systems entities viz. assessment proceedings, appeals, revisions, rectifications, etc., to meet user requirements. Any number of parameters in any combination can be specified to inquire on system entities. There is a comprehensive query where for a given PAN, the user can view different proceedings (in progress and completed) assessment year wise, arrears, TDS credits, payments, etc.

4.8.2 There are queries to prompt the user of any time barring actions, like completion of processing, scrutiny, rectification, revision, filing of appeal with ITAT, etc. The main input required is the date range within which user wants to see the actions that are getting time barred or have already got time barred. The system compares the due dates of the proceedings with the specified date range and shows the corresponding time barring cases. The due date of a proceeding is system controlled, user controlled, or is based on date of service of notice/order.

4.9 Outputs of AST : The various important outputs from AST are the mismatch list, list of cases selected for scrutiny, Intimation sheets, demand notices, challans, refund orders, notices u/s 142(1), 148, 143(2), list of non-filers, various registers like penalty register, appeal register, revision register, etc. can be printed. The reports of AST can be generated to either file, printer or screen, thereby providing a lot of flexibility to the user.

4.9.1 Linkages and interfaces of AST with other modules : AST maintains linkages between various proceedings and orders. For any proceeding, link is kept with the

- i. order against which it had been initiated, if any, (e.g. 1st appeal filed against an assessment order)
- ii. other proceedings, during which this proceeding was initiated (e.g. penalty proceedings initiated during assessment proceedings)

This assists in monitoring the chain of events taking place and helps in maintaining integrity.

4.9.2 AST has interfaces with the following other application systems :-

- i. Central Information Branch Module (CIB) - CIB provides information regarding potential assessee. Notices u/s 142(1) can be sent to potential assessee identified as part of CIB system.
- ii. Assessee Information System (AIS) - It has the details of assessee, like PAN, name, address, representative assessee details, status, PAN-AO link, jurisdiction hierarchy etc.
- iii. Tax Deduction at Source System (TDS) - TDS entries created through TDS returns can be used for on-line verifications and inclusion to the extent possible. These are posted in IRLA on completion of checking u/s 143(1). Automated credit for TDS payments will be given when TDS module is implemented nation wide.
- iv. Management Information System (MIS) - MIS uses assessment information to generate various analytical reports, for example, CAP II, QPR etc.
- v. Individual Running Ledger Account (IRLA) - It generates a comprehensive individual running ledger for each assessee.

4.10 Security and audit

4.10.1 An officer or his staff is allowed only to work on cases in the officer's jurisdiction. The superiors of the officer can only query the data related to the cases in officer's jurisdiction and no modifications are allowed. The access available to CCIT/ CIT/ JCIT/ AO of one jurisdiction is restricted to his jurisdiction only. They have no access to the assessment data of any other jurisdiction.

4.10.2 Data entry from acknowledgment sheet is allowed to the staff of the A.O.s. All preparatory work required prior to processing, regular assessment, rectification, giving effect, entry of TDS credits, etc. can be done by the AO's staff. The final approval required to mark the proceeding as complete, leading to initiation of printing of outputs and posting of entries in IRLA, can only be given by the AO. Security checks, wherever necessary, are also done by AST.

4.10.3 The system automatically captures user identification and time stamp for all the updates and additions. If any sensitive assessment details are changed, all previous details along with earlier user identification and time stamp are captured as part of the audit trail.

4.11 Other functionalities of AST

4.11.1 Rectification : Rectifications u/s 154/155 can be taken up *suo motu* by the AO, CIT, CIT (Appeals). Rectification proceedings can also be initiated on an application by the assessee. The details and results are maintained by the system as in the existing rectification register. In case the order is passed by the AO, he enters the changes needed in the order to be rectified and then the system works out the revised tax and interest liability of the assessee. Necessary outputs (demand notice, refund voucher/challan & calculation sheet) can then be generated on the system.

4.11.2 Penalty proceedings and waiver : The system permits initiation of penalty proceeding from return processing, scrutiny, or otherwise. Each penalty proceeding for an assessment year would result in a separate penalty demand. The penalty order and penalty notices should be made manually and are not being stored in the system. However, order details such as, section, date of passing of the order, penalty amount, etc. are being stored in the system. Variations in these demands due to appeal, rectifications, revisions, etc., can be tracked and recorded. The system allows the AO to give effect to the orders passed by the higher authorities. The AO enters the adjustments, in accordance with these orders. The system then recomputes / recalculates tax and interest liability of the assessee and generates required outputs, such as, demand notice, challan/refund voucher and calculation sheet. In partly set-aside cases, AO gives effect to the order and then initiates assessment proceedings u/s 143(3).

4.11.3 Revision : The system supports revisions by CIT on orders passed by AOs. Details of revision proceedings and corresponding orders is maintained in the system. The AO can subsequently use the system to give effect to the CIT's order. An application for waiver of penalty can be entered in the CIT's office. Orders for waiver of penalty have to be prepared manually and are not stored in the system. However, details of the order such as , section, date of passing of order, etc., are captured in the system.

4.11.4 Audit and prosecution : The system allows the maintenance of audit objections, raised by internal audit as well as C & AG. The AO's feedback, the audit's final decision and

details of important dates are kept to monitor progress. AST allows the prosecution cell to maintain and monitor prosecution proceedings initiated against the assessee.

SECTION - 5 : INDIVIDUAL RUNNING LEDGER ACCOUNT SYSTEM (IRLA)

5. Overview

5.1 The primary objective of the Individual Running Ledger Account (IRLA) System is to generate a comprehensive individual running ledger for each assessee. The system provides a comprehensive ledger for each assessee showing the date and amount. This ledger provides assessment year-wise listing of all demands, collections and refunds in respect of an assessee. For this, IRLA depends on the Tax Accounting System (for information relating to tax collections), the Assessment Information System (for information relating to demands, penalties, and refunds), and the TDS Information System (for information relating to TDS payments). Details regarding functioning of the Tax Accounting System (TAS) have been discussed in the chapter relating to Tax accounting. Once all these systems are functional, the Individual running ledger will contain details of all demands, payments, refunds etc. that have taken place after the system went live. The transactions which took place before the implementation Year have to be brought on the system as a one time effort in the first year. This requires import of the net demands outstanding prior to the system goes live, into IRLA. For this, the entries on the manual Arrear Demand and Collection Registers (AD&CRs) should be captured on to a floppy using the AD&CR software developed by the Directorate. IRLA allows import of these arrear entries from the floppy. No manual processing or any other action that involves change of demand should be made once the arrears are computerised and IRLA is made functional.

5.2 The Individual Running Ledger Accounting System can :-

- i. Import old arrears and link them with the new PAN that would be allotted to the assessee concerned
- ii. Maintain current status of demands, collections and refunds
- iii. Give details of Grant or vacation of stay and sanction of instalments on a demand
- iv. Allow write-off of unrecoverable demands
- v. Monitor defaults - on account of tax regular assessment and advance tax
- vi. Maintain interest u/s 220(2).
- vii. Provide a computerised ledger showing PAN-wise, assessment year-wise and date-wise record of transactions
- viii. Generate reports and provide on-line queries on assessee data.

5.3 Linking of arrears

5.3.1 The transactions which took place before the date of computerisation can not be ignored as they may affect future transactions and reports. Hence, IRLA provides the facility to import the net demands pending as on” the date of the computerisation”. This is the Initial IRLA phase

of the system. In the Initial IRLA phase, the entries in the manual arrear demand and collection registers (AD&CRs) are captured in ASCII data files and copied in a floppy. IRLA has the facility to import this data to populate the database. The existing manual AD&CRs contain old PAN or General Index Register (GIR) number in the entries. IRLA has to link these entries to the new PANs that have been allotted to the concerned assessee. The Initial IRLA captures these manual AD&CR entries as they appear in the manual AD&CR without the new PAN. These manual AD&CR entries are required to be linked to the new PAN allotted (or to be allotted) to the concerned assessee. IRLA assists the AO in linking the manual AD&CR entries of his jurisdiction brought on the system through the Initial IRLA. IRLA takes all the manual AD&CR entries one by one, and finds a match with reference to the assessee details in the AIS (PAN) database. This matching is done with reference to old PAN or GIR, Name and address. The matching is restricted to the jurisdiction of the AO and hence the AD&CR of the AO.

5.3.2 For the linking purpose, IRLA uses certain matching criteria on old PAN/GIR, name of the assessee and the address. However, none of the matches can be treated as a perfect match. IRLA generates a PAN Link Report showing the successful matches of the new PANs corresponding to each manual AD&CR entry. The AO has to decide depending on this report, which PAN is to be allocated to a particular manual AD&CR entry.

5.3.3 On the basis of the above matching, IRLA prints the PAN link report. This report gives the possible matched PANs along with other assessee details. After a manual AD&CR entry is linked to the new PAN, it will be available for query and report purpose but not for granting stay, installment, and write-off. The AO has to maintain details of stay, installment, and write-off for these PANs manually in his registers in respect of these entries. After such linking is over, the existing records will be deleted from the manual AD&CR database and inserted into the (computerised) AD&CR database.

5.4 Database of demand, collection and refund

5.4.1 Demand side : In the system, demand is generated by the Assessment Information System (AST) and posted in IRLA. IRLA only stores brief particulars of demand (i.e. date of the demand, due date of the payment, total amount) and the same is shown to the user. Complete history of its variation, over a period of time, due to changes like appeal effects, rectifications, revisions, is reflected through the ledger. Penalty demands can also be raised through AST. Unlike regular demands, there can be several outstanding penalty demands of the same assessee for the same year at a given time. IRLA also shows changes taking place with regard to each penalty demand. Interest u/s 220(2) generated, however, is treated in a different manner as there will be only one record in the ledger with respect to interest u/s 220(2) and it will be updated during any change.

5.4.2 Collection side : All tax payments made by the assessee directly to the Department are provided by the Tax Accounting System (TAS). Brief particulars of these tax payments (i.e. date of collection, type of payment - advance/ regular/ self assessment, and total amount) are transferred from TAS and stored in IRLA. The Tax Deduction at Source (TDS) System, when fully implemented, will transfer particulars of TDS payments to IRLA. When the TDS System is fully computerized all over India, tax deducted/ collected at source shall also be posted in the

ledger of the concerned assessee. IRLA stores brief particulars (i.e. date of the payment, nature of payment - horse race/ lottery/ contract etc. and total amount) of the TDS payment. In the intermediate stage i.e. Till the TDS System is not fully computerized, TDS payments are entered in AST at the time of processing of the returns. Thus, TDS payments are provided to IRLA by the AST system. In the event of a collection amount being corrected through TAS, the ledger shows the final figure of the collection amount. However, IRLA allows the user to see the previous values of the collection data. IRLA keeps brief particulars of refunds issued through AST (i.e. date of issue of refund, total amount of the refund) and shows it in the ledger of the assessee. IRLA shows in the ledger only the final figure of the refund.

5.5 Stay : Stay granted by the AO on a demand that has not fallen due, whether for full or part of a demand, can be entered on IRLA. In such a case, the system does not treat the assessee as a defaulter for the period of stay. However, once the stay period expires, and payment is not made by the assessee, the system treats that assessee as defaulter in respect of that demand. Letters of stay of demand can be printed on IRLA. The system also allow the AO to incorporate the stays granted by the ITAT, High Court, and Supreme Court. In cases of stay which depends on the result of an appeal, the system provides a facility to the AO to mark them as ineffective till the appeal decision is entered into the system through the AST. If a demand is under stay and undergoes a change as a result of appeal etc. the system automatically treats that stay as inactive. IRLA keeps the user identity and date stamp of the last update.

5.6 Instalments : On IRLA, the AO can enter installment plans granted on demands which have not fallen due. The installment plan may be for full or part of a demand. The system offers complete flexibility for working out installment dates and amounts. The AO can directly enter due dates and amounts for as many number of instalments as he wants to give. Alternatively, the AO can enter the total amount on which installment is to be given, the date on which instalments are to be granted, number of instalments, unit of time (for example, week, month), and factor (that is, the number of time units, for example, 2 months or 2 weeks). The AO can print the letter of installment and the relevant challans on IRLA. On the basis of these parameters, IRLA shows the due dates and amounts for the given number of instalments. The AO can alter these dates and amounts as per requirements. IRLA also allows the AO to modify the installment plan at any point of time. It treats an assessee as a defaulter if he fails to adhere to the installment plan. It also keeps the user identity and date stamp of the last update.

5.7 Write-off : This system enables the AO to enter details of total or partial write off - of a demand. Whenever any collection is received from the concerned assessee (whose demand was written off), the system allows the AO to mark that write off as non-active.

5.8 Interest u/s 220(2) : IRLA allows the AO to compute interest u/s 220(2) at any point of time in case payment is not made by the due date. In the event of the demand, for which this late payment was received, undergoing a reduction, It reworks the interest u/s 220(2). It also modifies the interest u/s 220(2) if there is change in the due date of the demand. The system re-computes the interest u/s 220(2) if the amount of payment, date, or classification (i.e. major head, minor head, sub head) undergo a correction. The AO can print a demand notice and challan for interest u/s 220(2) exceeding a cutoff amount. IRLA allows the CIT or the AO (on behalf of CIT) to

enter waiver of interest charged u/s 220 (2). The system allows 0 to 100% waiver on an amount of interest u/s 220(2) irrespective of whether the amount has been paid by the assessee or not.

5.9 Security and audit : The system allows access rights to the AO, JCIT/Addl. CIT, CIT, and CCIT of the concerned jurisdiction. The AO has access to all the processes of IRLA. The CIT can use IRLA for entering waiver of an interest u/s 220(2). The JCIT/Addl. CIT, CIT, and CCIT of the concerned jurisdiction have access to all query functions of IRLA. The AO of one jurisdiction can not have access to the data of any other jurisdiction. However, Members of the Board can access data of all jurisdictions for query purposes. The system maintains the identity of the user and the date stamp for the last update of the record.

5.10 Queries and reports : IRLA supports flexible queries to meet user requirements. Any number of valid parameters can be specified in any combination. Queries are provided on data related to demand, collection, stay, installment plan, write off for an assessee. It allows the user to select a particular entry in the ledger and see its full details. It displays all demands/ penalties juxtaposed to the corresponding collections and the net demand to be paid by the assessee. IRLA generates various reports for management reporting and usage by the AO. Some of the important reports are CD&CR, CAP - I report, list of advance tax defaulters, list of assessees in default, notice u/s 221, stay letter, installment letter, ledger statement etc.

5.11 Users of IRLA : IRLA has following classes of users depending upon their access/update privileges

5.11.1 IRLA administrator : NCC and each RCC have IRLA administrators, who are usually the System and Database Administrator of the NCC and RCCs. At the NCC, the Administrator is responsible for entering and maintaining administrative data for 'the year of computerisation of jurisdictions', rates of interest u/s 220(2), IRLA codes and parameters. At the RCC, the Administrator is responsible for refreshing the snapshots for 'the year of computerisation of jurisdictions', table of rates of interest u/s 220(2) , and IRLA codes, and parameters. He also maintains holiday dates. Besides he has the authority to view the audit log to check all the sensitive columns of various tables (for example due date in the ADCR table and interest u/s 220 in the Ledger). He can thus ascertain when the relevant columns have been updated and who has updated them. He can query the administrative data stored in the snapshots but he cannot update these administrative data.

5.11.2 Income Tax Officer/Assistant Commissioner/ Deputy Commissioner : The application level role is to be assigned to an Assessing Officer (AO) under the non-pilot scheme only. The AO has the authority to load the initial IRLA data, maintain the manual AD&CR database, maintain the AD&CR database, enter stay and instalments for demands, waiver of interest u/s 220(2), and write-off. He can execute various queries such as the summary ledger those relating to Individual Running Ledger Account, demand & collection register. He can also

generate reports namely Central Action Plan-I (CAP-I) Report, PAN link report, advance tax defaulters List, defaulters list, ledger statement and notices u/s 221. All these privileges are available at the RCC database. He also has the authority to query the administrative data stored in the snapshots at the RCC. The system automatically captures the user identification and the time stamp for all the updates and additions. If any sensitive details of assessee are changed, all previous details along with earlier user identification and time stamp are captured as part of an audit trail.

5.11.3 Staff of Income Tax Officer/ Assistant Commissioner/ Deputy Commissioner : This application level role is assigned to the staff (i.e. UDC/LDC now Sr. T.A./ T.A.) working under an Assessing Officer under the non-pilot scheme only. They can assist the AO in loading Initial IRLA data, maintaining the manual and computerised AD&CR databases. They can fill up the stay, write-off and installment applications but the final stay or installment or write-off can be granted only by the AO. They can execute various queries such as the queries with regard to interest u/s 220(2), the summary ledger, the Individual Running Ledger Account and demand & collection register and also generate all the reports. They can also query the administrative data stored in the snapshots. All these facilities are available only at the RCC database.

5.11.4 Income Tax Officer/Assistant Commissioner/ Deputy Commissioner (Pilot) : This application level role is assigned to an Assessing Officer (AO) where concurrent jurisdiction has been given to the Assessing Officers in the Range. The AO will have authority to load Initial IRLA data, maintain the manual and computerised AD&CR databases, enter stay, instalments, write-off, waiver, and execute various queries such as those the summary ledger, the Individual Running Ledger Account and the demand & collection register. He can generate all reports namely Central Action Plan 1 (CAP1) Report, PAN link report, advance tax defaulters list, defaulters list, ledger statement and notice u/s 221.

5.11.5 Staff of Income Tax Officer/ Assistant Commissioner/ Deputy Commissioner (Pilot) : A similar application level role is assigned to the staff working under an Assessing Officer, where concurrent jurisdiction has been given to the Assessing Officers in the Range.

5.11.6 Joint/ Additional Commissioner Range : This application level role is assigned to a Addl./JCIT Range under the non pilot scheme only. He can query the manual and computerised AD&CR databases. He can inquire about the stay and installment status for a demand and interest u/s 220(2), execute various queries such as those pertaining to the summary ledger Individual Running Ledger Account and the demand and collection register and generate a ledger statement and defaulters list. To assist the Addl./JCIT a similar application level role is assigned to the staff working under him under the non pilot scheme only. They s too can execute various queries and generate reports.

5.11.7 Joint/ Additional Commissioner Range (Pilot) : This application level role is assigned to Joint/ Additional Commissioner Range where concurrent jurisdiction has been given to the Assessing Officers in the Range. He has the same authority and privileges as a range Addl./JCIT mentioned in para 5.11.6 above. Corresponding application level role is assigned to the staff working under a range Addl./JCIT under the non-pilot scheme only, to assist the range JCIT. They can execute various queries and generate reports.

5.11.8 Commissioner, Chief Commissioner, and Board Member : A similar application level role is assigned to the CIT, Chief CIT and Member of the Board under their respective jurisdictions. They have the authority to query the manual and computerised AD&CR databases, inquire about stay and installment status for a demand, interest u/s 220(2) and write-off. The CIT can grant waiver of interest u/s 220(2). They can also execute various queries and see the administrative data stored in the snapshots. Corresponding application level role is assigned to the staff working under the CIT the CCIT and the Member Board to assist them. They can execute various queries and generate reports. The CCIT/ CIT/DCIT/AO of one jurisdiction is restricted to his jurisdiction only, having no access to the data of any other jurisdiction.

SECTION - 6 : BULK FILING SCHEME

6.1 Finance Act 2002 has amended Section 139 of Income Tax Act to enable the Board to notify a scheme for bulk filing of returns by salaried employees through their employer/DDO. A scheme has been notified by the Board on 24.6.02. It is presently applicable in 16 specified cities. The main objectives of the scheme are - to enable easy filing of returns by eligible salaried employees, faster processing of such returns, and speedy issue of refunds.

6.2 Under the Scheme willing and eligible employees (not having any business income) of eligible persons, can furnish their completed returns of income to their employers. The latter will then transcribe the data in these returns using a software called Bulk Return Preparation Software (BRPS) supplied by the Department free of cost. Only employers having more than 50 employees with taxable income in the preceding year are eligible to participate in the Scheme. The paper returns together with their electronic compilation on a computer readable medium called Bulk Return can be filed by the DDO/ employer with designated Assessing Officers in specified cities. The data in the bulk return is checked at the receipt counter after which it is loaded on to AST software and processed taking each bulk return as a single batch. On completion, a summary of the result of processing of the returns included in each bulk return would be generated and sent to the employer/ DDO together with the intimation sheets, challans or refund vouchers in the name of the eligible assessee. Those assessee who opt for direct credit of their refunds to their bank accounts and furnish requisite details will be given their refunds through the electronic clearance scheme of the RBI.

6.3 The scheme enables taxpayers to file their returns in a hassle-free manner either without any interface with the Department at the stage of filing or at the stage of receipt of refunds. It saves the Department rush at the stage of filing of returns. It also save time and resources for data entry and issue of refunds, intimations, challans etc.

SECTION : 7 - LIMITED SCRUTINY

7.1 Finance Act 2002 has amended Section 143 of the Act to provide for limited scrutiny of returns on specific issues identified by the Assessing Officer. The Assessing Officers should identify the returns requiring limited scrutiny under these provisions at the stage of processing itself, identifying the issues for scrutiny. These returns can be segregated after the processing is over for issue of notices under Section 143(2) indicating in each case the issues required for limited scrutiny. The only difference between a case for limited scrutiny and one for full scrutiny is that in the case of the former the issues are identified beforehand and the Assessing Officer can not travel beyond these issues listed by him in the notice for limited Scrutiny. The assessment in such cases is to be completed by way of a speaking order in which issues are decided after examining the evidence or record and arguments of the assessee, issue of demand notice etc. These should also be entered in the AST system. The provisions for limited scrutiny do not preclude a case being picked up for regular scrutiny u/s 143 (3).

SECTION : 8 - REVIEW OF SCRUTINY ASSESSMENT BY CIT

8. Scrutiny assessment completed in a month are to be reviewed in the subsequent month by the Commissioner of Income Tax.

ASSESSMENT PROCEDURE

(SCRUTINY)

I. Introduction

The procedure for scrutiny assessment forms part of the Assessment Procedure as laid down in Chapter XIV of the Income Tax Act 1961. Chapter XIV-B of the Act lays down the special procedure for assessment in search cases.

The Income Tax Act provides for two types of regular assessments :-

- i. Scrutiny assessment u/s 143(3)
- ii. Best judgment assessment u/s 144

Scrutiny assessment u/s 143(3) is concluded after giving the assessee a reasonable opportunity of being heard on matters relevant to the assessment. Best judgement assessment is resorted to only when the assessee does not comply with the notices or directions issued by the Assessing Officer (AO) and thereby forgoes hearing opportunities.

2. Selection of cases for scrutiny

2.1 Criteria

The Board annually frames the criteria for selection of cases for scrutiny. An AO does not require any prior statutory approval as such for selection of a case. However, he may be required to obtain prior administrative approval from higher authorities. Such pre-conditions for scrutiny are specified in the annual instructions.

Currently, the following returns are to be necessarily selected for scrutiny :-

- i. All returns filed in response to a notice u/s 148
- ii. All returns filed in response to notice u/s 158BC (or 158BC read with 158BD)

2.2 Issue of notice u/s 143(2)

The following points may be kept in mind while issuing a notice u/s 143 (2):-

- i. A notice u/s 143(2) can be issued only after the assessee has filed a valid return of income for the relevant assessment year or block period. (In case no valid return

of income has been filed despite the service of a notice u/s 142(1) - or 148 or 158BC, as the case may be, the assessment has to be finalized u/s 144.

ii. Reasons for selecting the case for scrutiny should be recorded in the file.

iii. Scrutiny assessment proceedings commence with the service of the notice u/s 143(2). The notice u/s 143(2) has to be served within twelve months from the end of the month in which return was filed. An invalid notice or the invalid service of a valid notice makes the assessment void ab initio. For discussion on a valid notice and service, please see the Chapter on 'Issue and service of Notices'.

iv. In case the assessee files a valid revised return after the service of the notice u/s 143(2), a fresh notice u/s 143(2) is required to be served.

v. An AO cannot call for any specific book of account or document by serving a notice u/s 143(2) as this notice is meant to provide an opportunity to the assessee to produce any evidence he relies on in support of his return.

If an assessee does not comply with the notice u/s 143(2) the assessment should be finalized u/s 144. In addition the assessee will also be liable for penalty u/s 271(1)(b).

3. Enquiry before assessment

3.1 Examination of books

3.1.1 Machinery provisions

The following provisions of the Income Tax Act empowers the AO to call for and examine the books of account:-

- i. Production of books : 142(1), 131
- ii. Impounding of books : 131, 133A
- iii. Compulsory audit : 142(2A)
- iv. Recomputation of business income: 145, 145A

Under section 143(3) an assessee can produce any book of account or document in support of his return.

3.1.2 Production of books

3.1.2.1.1 Issue of notice u/s 142(1)

The following points are to be borne in mind while issuing a notice u/s 142(1) calling for books of account or other documents:-

- i. The notice u/s 142(1) can be issued only to the assessee.
- ii. It can be issued only for the purpose of making an income tax assessment.
- iii. It is issued to compel the production of books of accounts or any other document which the AO requires to examine. These need not necessarily be what the assessee wishes to produce.

- iv. An AO can call for documents relating to any period but books of account pertaining to a period three years prior to the year under assessment cannot be called for.
- v. The books, documents etc. called for should be clearly specified in the body of the notice itself.

In case the assessee does not comply with the notice u/s 142(1) the assessment has to be finalized u/s 144 only. In addition the assessee is liable for penalty u/s 271(1)(b) and prosecution u/s 276D.

3.1.2.1.2 Issue of summons u/s 131

The following points may be borne in mind while issuing summons u/s 131

- i. Summons can be issued to anybody including the assessee for compelling production of evidence.
- ii. It has to be addressed to a living human being. In the case of a person other than an individual. It is to be addressed to and served on representatives specified in section 282(2)
- iii. It can be issued only during the pendency of any proceedings and for any purpose under the Income-tax Act.
- iv. A person summoned can be asked to produce only those books or documents, which are in his custody or control. They however may belong to any assessee.
- v. Books of account or documents pertaining to any period can be called for by issuing summons u/s 131.
- vi. Summons should not be issued in a routine manner.
- vii. Before issuing the same, the AO should record reasons for which summons are issued.
- viii. Unnecessary portions of the summons should be scored off.
- ix. It should be clearly specified in the summons whether the personal presence of the witness is required or the production of books or documents would suffice or whether both are necessary.
- x. The books or documents to be produced should be specified in the summons

Unlike in the case of notice u/s 142(1), non-compliance of a summons will not lead to a best judgment assessment. However adverse inferences may be drawn in the assessment order. The assessee will be liable to penalty u/s 272A under the Income Tax Act and provisions of the Indian Penal Code.

3.1.3 Issue of commission

An AO can issue a commission to another officer, which will empower him to call for and examine books of accounts relevant to any proceeding pending before the former. The issue of commission is as per Order 26 of the Civil Procedure Code. While issuing a commission the following points may be kept in mind:-

- i. A commission can be issued both within the local limits of the jurisdiction of the AO or outside the jurisdiction of the AO.
- ii. Within jurisdiction, the commission can be issued to any person the AO deems fit in respect of two categories of witnesses:
 - a. A witness who is exempted from personal attendance.
 - b. A witness who is unable to attend due to sickness or infirmity.
- iii. Outside the jurisdiction the commission can be issued to any competent authority having jurisdiction to examine a witness.

3.1.4 Placing marks of identification

It is necessary to place marks of identification on the books of accounts or documents examined during the course of assessment proceedings. For this purpose a rubber stamp is to be prepared showing the name of the official and the date of examination. Whenever a book of account or document is produced either the AO or the ITI should affix his signature along with the date stamp at appropriate places. For example the daybook or the journal can be stamped and signed in the beginning and at the end and where major adjustment entries are made; similarly, signatures and stamp can also be placed on the ledger, or trial balance, capital account, etc. Pages containing important entries, which have a bearing on the assessment, should invariably be signed and stamped by the AO. The signing and the date stamping should be done in such a manner that they do not mask or disfigure the book entries. The purpose of placing marks of identification is to ensure that the books examined would be easily identifiable in future. The details should be recorded in the order sheet.

3.1.5 Maintenance of list of books produced

The AO should maintain a separate running list of books of accounts or documents produced by each assessee during the course of assessment proceedings. The list should show the books produced and examined on each hearing date and should also specify the section under which the books were produced and the parties who produced them. The AO, along with the parties should affix their dated signature on the list. Once the assessment is concluded a line should

be drawn marking the completion of the list. The AO and the assessee or his authorized representative should sign under this. This list should be placed in the relevant Income-tax miscellaneous records (ITMR or MR in short) after due docketing in the order-sheet. The existence of such a list in the MR would prevent doubts or disputes arising in future as to whether a particular book was produced and examined or not.

3.1.6 Impounding of books

The following points may be borne in mind while impounding books of accounts or other documents:-

- i. Books of account or document can be impounded under the provisions of sections 131(3) or 133A
- ii. Books of accounts or documents produced under any provision of the Act can be impounded u/s 131(3). Therefore it is not necessary to issue a fresh summons u/s 131 for impounding books produced u/s 142(1) or 143(3).
- iii. Books of accounts or documents inspected during the course of a survey u/s 133A can be impounded u/s 133A(3).
- iv. An ITI cannot impound books
- v. Before impounding books reasons are to be recorded in the file
- vi. The authority impounding should pass an order in writing detailing the books or documents impounded. A copy in an annexure of the impounding order including the annexure should be served on the assessee.

Books or documents impounded cannot be retained by the AO beyond a period of 15 days (excluding holidays) without the prior approval of CIT (or CCIT/DGIT/DIT). For obtaining such approval a proposal should be sent to the CIT (or CCIT, DGIT/DIT) through proper channel specifying the reasons for impounding and continued retention and the date up to which such retention is sought. Such a proposal should be sent sufficiently in advance so that the approval if any can be received before the expiry of 15 days. The CIT (or CCIT/DGIT /DIT)'s approval should be in writing specifying the period up to which retention is granted. The assessee is not entitled to copies of the proposal sent to the CIT (or CCIT/DGIT/DIT) and the approval received, as these constitute internal communication. But once the approval is received the assessee should be intimated of that fact and the date up to which the retention is approved.

The books or documents impounded are to be kept in safe custody. A register of impounded books and documents must be maintained by the AO wherein the following information is to be kept:-

- i. name of the assessee, PAN, status and address
- ii. assessment year and proceedings
- iii. date of order u/s 131(3) or 133A(3)
- iv. list of books & documents impounded
- v. date of approval by CIT
- vi. date on which CIT's approval for retention expires.

It is illegal to keep books in custody beyond the time limit approved by competent authority. Hence, steps should be initiated before the expiry of such time limit either to get permission for extending the period of retention or releasing the books.

3.1.7 Compulsory audit

The following points are to be kept in mind while issuing direction for compulsory audit u/s 142(2A):-

- i. An AO should have examined the books of account and made an honest attempt to understand them prior to suggesting compulsory audit.
- ii. An AO cannot issue a direction for compulsory audit u/s 142(2A) without the prior approval of the CIT or CCIT. For this a proposal specifying the reasons for seeking compulsory audit should be sent through proper channel. If he is satisfied the CIT or CCIT should give his explicit approval in writing. The assessee is not entitled to copies of the proposal sent or approval given as they represent internal communication.
- iii. The CIT or CCIT should nominate the Chartered Accountant (CA) to carryout the audit. He should pass an order in writing fixing the remuneration which will be payable by the assessee. He should also maintain a panel of CAs for this purpose.
- iv. On receipt of the approval the AO should issue direction u/s 142(2A) to the assessee requiring him to get his accounts audited. The direction should be in the form of a speaking order spelling out:-
 - a. The AO's opinion that the compulsory audit is necessary having regard to the nature and complexity of accounts and interests of revenue
 - b. The fact that direction is issued with the prior approval of CIT/CCIT
 - c. The name of the nominated CA
 - d. Audit fee fixed
 - e. The fact that the audit fee is payable by assessee failing which it will be recovered from him in the same manner as arrears of tax
 - f. The date by which audit report in Form 6B is to be furnished
 - g. The additional particulars, which the AO requires to be verified.
 - h. Consequences of non-compliance

A copy of the direction should be served on the CA also. A copy of the CIT's order fixing audit remuneration should be served on both the assessee and the CA.

An AO can extend the time limit for submission of the audit report either suo motu or on application by the assessee. But the total time given should not exceed 180 days. The period between the date of direction and the date on which the assessee is required to furnish the audit

report (not the date on which he actually furnishes it) is excluded from the period of limitation for finalization of the assessment.

The expenses for audit have to be borne by the assessee. If he fails to do so the same can be recovered in the manner of tax arrears. An assessee has to be given an opportunity of being heard on the findings of the audit before they are used against him. If an assessee does not comply with directions u/s 142 (2A), the assessment has to be finalized u/s 144. The assessee will also be liable to penalty u/s 271(1)(b) and prosecution u/s 276D.

3.2 Examination of witnesses

3.2.1 Machinery provisions

The Income Tax Act empowers the AO to examine witnesses under the following provisions:-

- i. Section 131: On oath
- ii. Section 143(3): On oath
- iii. Section 133A(3): Without oath
- iv. Section 226(3): On oath

3.2.2 Statement u/s 131

While recording a statement u/s 131 the following points may be kept in mind:-

- i. Before recording a statement u/s 131 it is necessary to issue summons u/s 131 to the deponent. (Please see Issue of Summons and Issue of Commissions under Examination of books and the chapter on Issue & Service of notices). If an assessee requests the AO to issue summons to compel the attendance of his witnesses it is the duty of the AO to issue summons to them. The fact that the witnesses are being summoned at assessee's instance should be recorded in the file. These witnesses continue to be the assessee's witnesses
- ii. The witness summoned does not have the right of representation through counsel if his personal appearance is specified.

3.2.3 Statement u/s 143(3)

The following points may be kept in mind while recording a statement u/s 143(3) :-

- i. There is no need to issue summons
- ii. The AO can examine any witness produced by the assessee including those produced at the AO's instance
- iii. A statement u/s 143(3) can be recorded only during the pendency of assessment proceedings and for the purpose of making an assessment

3.2.4 Statement u/s 133A(3)

Salient points to be borne in mind while recording a statement u/s 133A(3) :-

- i. There is no need to issue summons
- ii. No statement on oath can be recorded

iii. AO can examine any person who may have information useful to any proceeding (pending, concluded or future) under the Act

3.2.5 Statement u/s 226(3)

Any person objecting to garnishee proceedings can be examined on oath by the AO or TRO.

3.2.6 Recording of statements

While recording statements the following points may be kept in mind :-

- i. A statement is required to be recorded before the AO
- ii. The AO can decide whether to allow or not to allow the presence of the assessee or his AR. In case they are present that fact should be recorded at the end of the statement and their signatures obtained.
- iii. The signature of the deponent should be obtained on each page and at the end of the statement. Each correction should be attested by the deponent. A deponent who refuses to sign is liable for penalty u/s 272A.
- iv. In case of a statement on oath the oath should be administered by the AO. The form of oath/affirmation is stipulated in the schedule to section 6 of the Indian Oaths Act. The form of oath given is: "I do swear in the name of God/or I do solemnly affirm that what I shall state will be the truth, the whole truth and nothing but the truth".
- v. A witness should first be examined by the party producing him (assessee or the AO), followed by cross-examination by the other party. After the cross-examination there can be a re-examination by the original party.
- vi. The statement recorded from a departmental witness cannot be used against the assessee unless the assessee is given an opportunity to cross-examine the witness. A statement without such cross examination would not be admissible evidence. A copy of the statement so recorded should be given to the assessee. In case the assessee does not wish to cross-examine the witness, that fact should be recorded in the order sheet as well as in the body of the statement. The signature of the assessee should be obtained on such noting.

Offences relating to depositions attract various penal consequences under the Indian Penal Code as well.

3.2.7 Granting copies

An assessee should be provided with copies of statements before the latter are utilised against him for the purpose of assessment. Granting of copies should be recorded in the order-sheet and brought out in the assessment order as well. A witness is not entitled to a copy of his statement.

3.3 Other enquiries

3.3.1 Machinery provisions

The following provisions of the income tax act empowers the AO to conduct other enquiries:-

- i. Section 142: Notice u/s 142(1) can also be issued calling for:
 - a. a return of income from non-filers,
 - b. any information, which the AO requires. In case he wants to ask for a statement of assets and liabilities not included in the accounts he should take prior approval from the JCIT/ADDL CIT.

Section 142(2) empowers the AO to conduct any enquiry he deems fit. The enquiry u/s 142 can be conducted only at the pre-assessment stage. The assessee should be given an opportunity of being heard on adverse evidence found against him.

- ii. Section 131: Power of discovery & inspection. This can be used during the course of any pending proceedings for any purpose under the Act. The AO can also issue commissions to other officers to conduct enquiries on his behalf. Here again before using any adverse evidence found the assessee should be given an opportunity of being heard.

iii. Section 133(6) : An AO can seek any information from any person including a banking company if he is of the opinion that such information will be useful for or relevant to any enquiry or proceeding under the Income-tax Act. A requisition u/s 133(6) can be made by issuing a letter to the person concerned specifying the details called for and the provision under which the requisition is made. In case no proceedings are pending, prior approval of CIT or DIT is required. For this, a proposal may be sent through proper channel. Once the approval is received, the letter to the party can be issued. The fact that prior approval of CIT/DIT has been obtained may also be mentioned. Neither the assessee nor the person from whom information is sought, however, is entitled to a copy of the proposal sent or approval received. Non-compliance with a letter issued u/s 133(6) attracts penalty u/s 272A.

- iv. Section 133A : Please see the chapter on Survey

3.3.2 Enquiry abroad

An AO cannot directly conduct enquiries abroad. For this purpose a reference should be sent to the Foreign Tax Division of the Board through proper channels.

3.4 Conduct of hearings

3.4.1 Maintenance of visitor's book

A visitors' book must be maintained in the office where all the visitors (including the assessee and their authorised representatives) can be asked to enter their names specifying the date and time of their arrival. Persons are to be called in only after making such entries. The visitors' book should have column for :-

- i. The time and date of the visit,
- ii. The name of the party calling on,
- iii. Purpose of visit,
- iv. Documents brought if any.

This book must be kept in the personal custody of the AO.

3.4.2 Posting of cases

A case may be posted for hearing by issuing a notice u/s 143(2) or u/s 142(1) or u/s 131 or a simple letter. While posting a case for hearing the following points may be kept in mind:-

- i. The venue of hearing should clearly be specified giving particulars of the office of the AO such as the correct address of the office, the building, floor and the room number.
- ii. The correct official address and phone number of the AO should be given.
- iii. The time of hearing should be clearly specified. Each case posted on the same day must be given separate timings with adequate gap so that the taxpayer does not have to wait. The AO is expected to adhere to the timing given.
- iv. It is preferable to display the list of cases posted for each week with date and timings on a notice board.

3.4.3 Authorized representative

An assessee- except when summoned u/s 131 to appear in person- has the right to appear through an authorized representative. The authorised representative appointed by an assessee, must file his authorization on a stamp paper before the Assessing Officer. The value of stamp to be affixed is as specified in the law prevalent in the state. Once the authorization is filed the Assessing Officer must examine it with reference to the following points:-

- i. Has the authorization been issued prior to the hearing?
- ii. Is it from the assessee concerned?
- iii. Is it in favour of a person qualified u/s 288?
- iv. Has it been signed by the assessee issuing it?
- v. Has it been signed by the representative accepting it?
- vi. Is it for the assessment proceedings of the relevant assessment year?
- vii. Does it carry the requisite stamp?

Once the authorization is found to be valid, it should be filed in the MR after due docketing in the order-sheet. The stamp affixed may be cancelled.

3.4.4 Conduct of hearings

The assessing officer has to bear the following facts in mind while conducting hearings:-

- i. He must personally conduct the hearings. This statutory power vests with the officer alone and cannot be delegated to any lower level functionary like an ITI. An ITI or any other official however, may assist the officer during the course of the hearing.
- ii. Both the Assessing Officer and the assessee are expected to adhere to the date and time given in the notice.

iii. In case the AO, due to unavoidable circumstances, is unable to adhere to the schedule of hearing, he should inform the assessee.

iv. The case can be discussed only with the assessee or his AR. Before hearing the case, it has to be ensured that the parties appearing are duly authorized.

3.4.5 Order sheet entry

The minutes of the hearing must be entered with date, in the order-sheet. The entry should be brief, covering among other things :—

- i. The names of the persons attending the hearing on behalf of the assessee and their occupations,
- ii. Documents produced, (specifying documents examined and returned and documents filed)
- iii. Documents called for,
- iv. Issues discussed and
- v. Re-posting, if any.

This note has to be initialed by the Assessing Officer, the assessee and/or his authorised representative. Documents produced by the assessee (except those to be returned) must be filed in the MR.

3.4.6 Re-postings

A case can be re-posted by issuing a simple letter or hearing notice. There is no need to issue a statutory notice for this. It is preferable to give assessee a fresh opportunity for hearing when there is a change in the incumbent. If the assessee demands a hearing u/s 129 it should be specified in the notice that an opportunity u/s 129 is being given.

3.4.7 Adjournments

The purpose of hearing is to accord the assessee an opportunity to present his side of the case. If he needs a little more time to do so, the same must be given, since lack of reasonable and proper opportunity can invalidate the entire proceedings. Hence, it is better to grant the adjournments sought, as far as possible. However, sometimes, the assessee misuses this facility to evade an issue or to frustrate an investigation. Several times hearings are not attended without seeking adjournments. As a result issues remain unresolved; cross examination opportunities are wasted and the case gets stuck. The AO could take the following precautions :-

- i. Avoid giving adjournments off record.
- ii. Keep a track of hearings posted, hearings unattended and adjournments sought and given.
- iii. Make proper order-sheet entries for each posting, hearing and seeking and granting of adjournments.
- iv. If nobody attends a hearing or the request for adjournment comes after the hearing date, enter the facts in the order-sheet.
- v. Give the assessee adequate time to respond to a specific issue in the first notice itself. Afterwards give only one or two adjournments on the same issue.

4. Directions of JCIT/Addl. CIT u/s 144A

A JCIT / Addl. CIT can intervene at any stage of assessment proceedings and issue directions to the AO under the provisions of section 144A, which will be binding on the AO. The following points are to be noted in this regard:-

- i. The Addl. CIT/JCIT can issue directions u/s 144A:
 - a. Either suo motu ; or
 - b. On reference by AO; or
 - c. On an application by assessee.
- v. The Addl.CIT/JCIT should maintain a separate file for each reference, beginning with the reference by assessee or the AO. In case of suo motu action he should open the file with a note on the reasons for initiating proceedings u/s 144A. These files are subject to appellate scrutiny.
- vi. If reference is made by the assessee the Addl. CIT/JCIT should forward a copy of the reference to the AO and call for his report and the complete case records.
- vii. If reference is made by the AO, the latter should send a report to the Addl CIT./JCIT detailing the facts of case and the issues on which directions are sought. The records of the case should be forwarded along with the reference.
- viii. In case action u/s 144A is initiated suo motu the Addl.CIT/JCIT should intimate the AO and forward a copy of the reasons recorded and call for his report and case records.
- ix. In all cases, the AO should make suitable entries in the file and await Addl. CIT/ JCIT's directions.
- x. JCIT/Addl. CIT has to give the assessee an opportunity of being heard before issuing directions which are prejudicial to his interests.
- xi. Direction on the lines of investigation are confidential in nature and should not form part of other directions u/s 144A. For this purpose separate folders should be maintained. There is no need to give the assessee an opportunity before issuing such directions.
- xii. Addl. CIT/JCIT can issue directions even on issues not arising out of the reference as he has suo motu jurisdiction.
- xiii. He, however, cannot issue directions, which are outside the AO's jurisdiction as his jurisdiction is co-terminous with that of the AO.
- xiv. JCIT/Addl. CIT's directions are binding on the AO.

5. Order of assessment

5.1 Regular assessment

The following points are to be kept in mind while passing the order of assessment:-

- i. The assessment order must be a speaking one, giving:-
All introductory details on the assessee and his sources of income,
The additions or disallowances made and reasons thereof,
Details on the assessment procedure followed:-

- a. Details of hearing opportunities given-whether availed or not
 - b. Details of the copies of documents given
 - c. Details of cross-examination opportunities given whether availed or not.
- xv. The assessment order should contain express direction to levy interest specifying the relevant sections.
- xvi. Assessment order format (ITNS 65) must be filled up accurately and without omission.
- xvii. The computation of taxable income, interest due and demand raised (or refund granted) should be clearly shown in the order.
- xviii. In case of demand or refund exceeding Rs.1,00,000/- the AO himself should recheck the computation
- xix. Penalty proceedings, which can be initiated only during the pendency of assessment proceedings, should be initiated. This fact should be mentioned in the assessment order.
- xx. The AO should perform the following tasks simultaneously:-
 - a. Sign the assessment order, the demand notice, challan/refund voucher; and
 - b. Make necessary entries in the Demand & Collection register (D & CR)
- xxi. The date of the assessment order should be the date on which entries are made in the D&CR and not the date on which the order was dictated or typed.
- xxii. The assessment order, demand notice and challan/refund voucher should be served as expeditiously as possible and in any case within a fortnight of the date of assessment.
- xxiii. The date of service of the demand notice should be noted in the D&CR
- xxiv. The AO should inspect the D&CR by the fourth of the succeeding month with a view to:-
 - a. Ensure that the date of service of demand is entered wherever demand notices are served
 - b. Find out reasons why demand notices were not served in other cases
 - c. Take steps to serve the remaining demand notices without delay.
- xxv. The JCIT/Add'l CIT should inspect the D&CR on the 7th of the succeeding month to test check the statistics furnished in the statements with the entries made in D&CR and also to ensure that it is updated.

5.2 Best judgment assessment u/s 144

5.2.1 Circumstances

Best judgment is mandatory in any of the following circumstances

- i. No return is filed u/s 139(1) or 139(4) or 139(5)
- ii. No compliance to a notice u/s 142(1) or direction u/s 142(2A)
- iii. No compliance to a notice u/s 143(3)

The AO has the option to finalize the assessment u/s 144 if

- i. The AO is not satisfied with the correctness or completeness of accounts
- ii. The assessee is not regularly following either cash system or the mercantile system as required u/s 145(1)

- iii. The assessee is not regularly following the notified accounting standards

5.2.2 Procedure : While making an ex-parte assessment u/s 144 the following points should be borne in mind:-

- i. A show-cause notice must be issued to the assessee prior to the finalization of assessment detailing:

- a. The reasons for resorting to the ex-parte assessment

- b. The manner of estimating the taxable income and the reasons thereof.

The assessee should be offered an opportunity of being heard on these issues on a specified date.

xxvi. No show cause notice is necessary in cases where a notice u/s 142(1) has already been issued to the assessee.

xxvii. In the prescribed format of assessment order (ITNS 65) the section should clearly be mentioned as 144

xxviii. The nature of non-compliance on the assessee's part, which has lead to the ex-parte order, must be clearly brought out in the order along with manner of estimating the taxable income.

xxix. The assessment must be concluded after making all necessary enquiries possible.

xxx. Income assessed must have a direct nexus to the evidence available with the AO. High-pitched assessment unsupported by evidence must be avoided.

5.3 Protective assessment

The following points are to be kept in mind while making a protective assessment :-

- i. Making protective assessments is not provided for in the Act. It is a departmental practice, which has gained judicial recognition.

- ii. A protective assessment is resorted to when there is a doubt regarding the ownership of an income. In such cases, the income is assessed in the substantive manner in the hands of the person who is strongly believed to be the recipient. If there is any other person who may be a likely recipient of the same income, a protective assessment is made in his hands as well as a matter of caution. This is to eliminate the chance of the assessment getting barred by limitation.

- iii. The demand relatable to protective assessment is not to be enforced and should be kept in abeyance. This demand should be shown as demand not collectible in the statements.

- iv. In the assessment order the AO should clearly state: -

- a. That the income is assessed in a protective manner

- b. The details such as name and PAN of the assessee in whose hand the substantive assessment is made.

- c. The demand is kept in abeyance as it relates to a protective assessment.

- v. The protective assessment becomes infructuous once the appellate authorities confirm the substantive assessment. The AO can cancel such redundant assessments by passing rectification orders u/s 154. These rectifications can be done even after the expiry of statutory time limits.

vi. If the substantive assessment gets knocked off in appeal the protective assessment becomes substantive. The AO should initiate proceedings for the collection of such demand at that point of time.

vii. If the jurisdiction of the protective assessment is with another AO, the information should be passed on to him immediately.

6. Issue and service of demand notice

The following additional points may be borne in mind while issuing demand notices:-

i. A duly served demand notice is a prerequisite for subsequent collection and recovery proceedings

ii. A demand notice needs be issued even in cases where no demand is raised, as this is essential for filing of appeals.

iii. In case the time allowed for payment is to be shortened in exceptional circumstances, the AO should get the prior approval of the Addl.CIT/JCIT.

iv. Where demand is reduced as a result of appeal / revision /rectification, a fresh demand notice is not required. The old notice will hold good for the reduced demand. Quantification of tax should form part of the order giving effect to the appellate/revision order.

v. However, if the demand is enhanced as a result of an appellate / revisionary /rectification order a fresh demand notice needs to be issued for the additional amount.

vi. The AO should ensure that challans accompanying the demand notice are properly filled up:-

a. The challan form used should be the appropriate one so that the payment is accounted for under the appropriate head such as IT, CT etc.

b. Separate challans should be issued for different assessment years

c. The name, address, status and PAN of the assessee should be correctly quoted.

d. The assessment year should be clearly mentioned in the challan

e. Break-up of total demand into tax, surcharge, interest, penalty etc. should be given.

f. Whether the demand relates to current demand, arrear demand or advance tax should also be clearly indicated.

g. D&CR number should be quoted in the challan.

h. The AO code should be mentioned.

7. Rectifications u/s 154

7.1 Scope of rectification u/s 154

The scope of sec. 154 is limited to rectification of mistakes apparent from the record. The following points may be kept in mind in this regard :-

i. An order of rectification cannot be passed in respect of a debatable issue.

ii. Such an order cannot also be passed on the basis of evidence gathered after the making of the original assessment.

- iii. Rectification u/s 154 is also possible in the following cases:
 - a. Subsequent interpretation of law by the Supreme Court,
 - b. Cancellation of redundant protective assessments,
 - c. Cancellation of penalty where the assessment is cancelled or annulled in appeal,
 - d. Subsequent submission of evidence of payment in respect of sums disallowed u/s 43B,
 - e. Subsequent issue of notification u/s 10(23C) or 35(1).

7.2 Procedure for rectification

7.2.1 Rectification u/s 154 in respect of an order of assessment can be effected:-

- i. By the AO suo motu
- ii. By him on an application by the assessee

7.2.2 Rectification of an appellate order of CIT (A) can be made:-

- i. By CIT (A), suo motu
- ii. By him on a reference by the AO
- iii. By him again on a reference by the assessee

7.2.3 If suo motu rectification is beneficial to the assessee, the order can straightway be passed after recording reasons in the order-sheet. If, on the other hand, the rectification has the effect of enhancing the liability of the assessee, an opportunity must be given by issuing a notice u/s 154 to the assessee specifying the rectification contemplated. The order of rectification can be passed only after such opportunity.

7.2.4 An order of rectification can be passed within four years from the end of the year in which the order sought to be rectified was made. The application for rectification filed by the assessee should be disposed off within 6 months from the end of the month in which it was filed. Rectification can be made, even after the expiry of the 4-year time limit if the assessee had filed his application within the four-year period. Similarly protective assessments can be cancelled even after the four-year time limit.

7.3 Order of rectification

The rectification order (or the order rejecting the assessee's application) must be a speaking one. In case the assessment is rectified the order should contain the revised income, tax and interest computations. This is an appealable order.

8. Amendments u/s 155

Amendments u/s 155 are as specified in that section. The time limits for passing the amendment orders are also specified in the various provisions of this section. The procedure is identical to that of rectification.

9. Assessment of escaped income u/s 147

The following points may be kept in mind while initiating action u/s 147:-

- i. Action u/s 147 can be taken only to bring to tax any income, which had escaped assessment and which has subsequently come to the notice of the AO or to re-compute loss, depreciation or any other allowance.
- ii. Reopening cannot be effected to give assessee any relief, deduction or allowance or rebate.
- iii. Action u/s 147 can be initiated only if the AO has reason to believe that taxable income has escaped assessment. Thus a case cannot be reopened based on the comments of a third party like audit. However the substance of such comments can be the basis of the AO's belief.
- iv. Before initiating action u/s 147 the AO should record his reasons in writing in the order-sheet of the MR of the relevant year. The reasons so recorded need not be communicated to the assessee.
- v. Notice u/s 148 calling for a fresh return can be issued only after such reasons have been recorded.
- vi. In cases where the AO needs the sanction of higher authorities to issue the notice u/s 148, a proposal should be sent through proper channel giving in detail the AO's reasons for the belief that taxable income has escaped assessment. The JCIT/ ADD'L CIT or CIT as the case maybe should sent back the proposal with their explicit sanction (in case the proposal is approved). The AO can issue the notice u/s 148 after the receipt of such sanction order.
- vii. The return of income filed in response to the notice u/s 148 should in all cases be selected for scrutiny.
- viii. The AO can drop the proceedings u/s 147 if he finds that there had been no escapement of income. However it is preferable to bring this to the notice of the higher authorities and take their approval before dropping the proceedings
- ix. A return called for u/s 148 is treated on par with the return required to be filed u/s 139.
- x. In case the assessee fails to comply with the notice u/s 148 the assessment has to be finalized u/s 144.
- xi. The scope of the assessment u/s 147 is not restricted by the reasons recorded for the issue of the notice u/s 148. Once a case is reopened the AO is free to look into any other issue.
- xii. The reopened assessment can be concluded either u/s 143(3) or u/s 144.
- xiii. The law applicable for reassessment will be the law as it stood for the relevant assessment year
- xiv. Income assessed in a reopened assessment should be charged to tax at the same rate or rates as applicable to the original assessment.
- xv. The time limit for reopening an assessment or concluding it after it has been reopened is specified in sections 149.

xvi. A case can be reopened at any time to give effect to any directions given in any appeal, revision, reference or judicial order. However, if the time limit for reopening an assessment u/s 149 has already expired before passing the original order, which has been the subject matter of the appeals, revision, reference or judicial order mentioned above, reopening is not possible.

xvii. Reopened assessments are subject to rectifications, amendments, revision, appeal and fresh reopening, as any other assessment.

Chapter- 3

ASSESSMENT PROCEDURE (SEARCH AND SEIZURE)

Introduction

The special procedure for assessment of search cases is laid down in Chapter XIV-B of the Income Tax Act. The provisions of this chapter are applicable to all searches conducted after 30-6-1995.

1. Jurisdiction : Assessment order under chapter XIV-B cannot be passed by an officer below the rank of an Assistant Commissioner. Search cases are generally assessed at Central Circles. When a search is conducted or a requisition is made, the CCIT or the CIT passes an order u/s 127 assigning the jurisdiction of the cases covered by the action u/s 132 or 132A to a competent AO. The investigation wing should send the proposal for centralization to the Chief Commissioner within one month from the date of initiation of search. The centralization should be completed and the orders u/s 127 be issued within two months from the date of the search.

2. Transfer of records : Once the notification u/s 127 is passed all the relevant case records should be immediately transferred to the AO to whom the case is assigned. These would include inter alia the miscellaneous records, assessment records, permanent records, confidential records, the impounded or seized books and documents and the communications received from the investigation wing including the appraisal report. In case there is any delay the AO concerned must immediately bring all delays in the transfer of records to the notice of higher authorities. He must direct his efforts to get the records transferred to himself so that the relevant assessment proceedings can be started as soon as possible.

3. Custody and release of seized material : The following points have to be borne in mind with regard to custody and release of seized material:-

i. The cash seized is to be deposited in the jurisdictional Commissioner's personal deposit account. Valuables such as bullion or jewellery etc.. are retained in the custody of the department and kept in safe deposit lockers or the strong room.

ii. U/s 132B, the explained assets except those required to meet any existing liability should, with the prior approval of the prescribed authority, be released within 120 days from the date of the search. The AO should give the assessee adequate opportunity to furnish his explanation and evidence in support thereof.

iii. Cash seized should be adjusted against any existing liability in the manner provided u/s 132B. Money deposited in the PD account should be expeditiously adjusted against such demand. Seized assets other than cash may be applied for discharge of any liability in accordance with Section 132B(iii) read with the third schedule.

iv. The seized records are to be handed over to the AO by the authorized officer within two and a half months from the date of the search.

v. The AO can keep the seized books etc.. for a period up to 30 days from the date of the assessment order. If the records are to be retained beyond this period the permission of CIT is required

vi. The AO is personally responsible for the safe custody of seized material. Hence while receiving them from the Authorized Officer he must verify the material with reference to the Annexures to the panchanama and ensure that all seized records are handed over to him. A similar verification must be done while handing over the material to a successor officer.

vii. A register of seized books & documents is to be maintained.

viii. Some of the records seized such as fixed deposit receipts, promissory notes, bank guarantees etc. have expiry dates. These details must be noted in the register of seized books so that the AO can take necessary steps for renewal before they expire.

ix. The assessee should be allowed to inspect seized records and be given copies of statements taken, within 15 days from the date of receipt of an application in this regard. The facts should be clearly recorded in the order-sheet and brought out in the assessment order. The register prescribed for this purpose should be duly maintained

4. Appraisal report, panchanama and annexures : Along with the seized material the investigation wing forwards to the Assessing Officer an appraisal report, copies of *warrants*, and the panchanama and its annexures. These should be handed over to the A.O. within two and a half months from the date of initiation of the search. The appraisal report comprises the investigation wing's findings on the search and may include a note on the modus operandi of tax evasion adopted by the searched parties and their associates, tentative computation of undisclosed income in the hands of various assessees, overview of seized materials and suggestions for further enquiries. This report is prepared essentially for the guidance of the AO; as such, its findings are not binding on him. Wherever there is a major deviation between the income estimated in the appraisal report and the income proposed to be assessed, however, the matter should be discussed between the assessment wing and the investigation wing and the minutes of this meeting should be recorded. The AO should leave a detailed note in the order-sheet of the MR in this regard. It must be noted that the appraisal report is open to scrutiny by audit along with the relevant assessment records in all search cases.

5. Cases covered by chapter XIV-B

5.1 These assessees can be of two categories:-

i. Persons in whose case a search was conducted or a requisition made resulting in the discovery of undisclosed income.

ii. Persons who were not searched, but in whose material case was found as a result of a search in third party premises indicating undisclosed income in their hands.

5.2 In the first case the Assessing Officer should issue a notice u/s 158BC calling for the return of undisclosed income for the block period. The block period would comprise six consecutive years immediately preceding the year of the search as well the fractional year ending on the date of commencement of the search. (Please see section 158B). The return should be in Form 2B verified in the manner prescribed in Rule 12(1A). An assessee is to be given a minimum of fifteen days and a maximum of forty-five days from the date of service of the notice to file his return. It should be ensured that notices u/s 158BC are issued within three months from the date of initiation of the search.

5.3 In the second case, the Assessing Officer should record his satisfaction in the order-sheet u/s 158BD that certain material have been found which would be relevant for determination of undisclosed income in the assessee's case. Once this satisfaction is recorded the AO would be competent to issue the notice u/s 158BC calling for a return. In case the AO does not have jurisdiction over the person, he can pursue two alternative courses :-

- i. Bring the issue to the notice of higher authorities and get the case transferred to himself and then issue notice u/s 158BC.
- ii. Forward the relevant material to the officer having jurisdiction over the case informing him about his assessment of the facts. The officer receiving this communication should then record his own satisfaction regarding the applicability of section 158BD in the order-sheet and then issue a notice u/s 158BC.

5.4 It is to be remembered that section 158BD contemplates only satisfaction of the AO. The notice calling for the return is issued under section 158BC.

6. Action when return is filed : Once the return is filed, the AO must issue a notice u/s 143(2) taking the case up for scrutiny. All the procedures for regular assessment, regarding enquiry by the assessing officer, finalisation of the assessment and issue of a demand notice, are applicable to search assessments as well.

7. Action when no return is filed : In case no return is filed, the assessment has to be finalized u/s 144. Here again all the provisions of regular assessment would apply, as in the case of proceedings completed ex-parte.

8. Rate of taxation : Undisclosed income should be taxed at the rate or rates specified for the relevant block period.

9. Approval for assessment : An assessment order under Chapter XIV-B can be passed only with the previous approval of the range JCIT/ADDL.CIT. (For the period from 30-6-1995 to 31-12-1996 the approving authority was the CIT.) The Assessing Officer should submit the draft assessment order for such approval well in time. The submission of the draft order must be docketed in the order-sheet and a copy of the draft order and covering letter filed in the relevant miscellaneous records folder. Due opportunity of being heard should be given to the assessee by the supervisory officer giving approval to the proposed block assessment, at least one month before the time barring date. Finally once such approval is granted, it must be in writing and filed in the relevant folder indicated above after making a due entry in the order-sheet. The assessment order can be passed only after the receipt of such approval. The fact that such approval has been obtained should also be mentioned in the body of the assessment order itself.

10. Time limit for passing block assessment orders : A search assessment order can be passed only within two years from the end of the month in which :-

- i the search was concluded as per the last panchanama drawn, or
- ii the books of accounts or documents etc.. were received by the Authorized Officer in response to the requisition u/s 132A.

In cases u/s 158BD, the limitation prescribed is two years from the date of issue of the notice u/s 158BC. As in the case of a regular assessment, the periods covered by audit u/s 142(2A) etc.. are excluded from the calculation of the time limitation.

11. Report and registers.

11.1 The range Addl./JCIT should send a progress report in all search & seizure cases to the CIT every three months from the end of the month in which the search was initiated. A similar progress report should be sent to DGIT/CCIT at intervals of six months.

11.2 Range Addl./JCIT should also maintain a register for each search & seizure case incorporating the following details:-

- i. Name of the assessee
- ii. Date of initiation and completion of search
- iii. Whether case covered by section 158BD
- iv. Seizure made with break up
- v. Disclosure if any u/s 132(4)
- vi. Date of passing orders for centralization
- vii. Date of receipt of appraisal report
- viii. Date of receipt of seized records including copies of warrants
- ix. Date of application, if any, received for inspection and date on which inspection actually allowed
- x. Date of issue of notice u/s 158 BC
- xi. Date of filing of return for block assessment
- xii. Income disclosed in block return
- xiii. Details of tax paid on income disclosed in block return
- xiv. Adjustment from P.D. accounts, if any, against tax on income disclosed in block return
- xv. Date of application, if any, from the assessee making a claim that seized assets or parts thereof are explained
- xvi. Details and date of decision on (15) above
- xvii. Date of first notice to take up block assessment proceedings and also details of subsequent notices/questionnaire/hearing etc..
- xviii. Date(s) of hearing before Addl./JCIT before granting approval to block assessment
- xix. Assessed income and date of order
- xx. Tax liability on assessed income
- xxi. Details of adjustment from PD account, after completion of block assessment with date,
- xxii. Whether case processed for launching prosecution and details of prosecution, if any, launched

11.3 CIT and DGIT/CCIT should inspect this register every three months/six months and record their comments therein. Member (Inv.) should also inspect this register during his visit.

Chapter- 4
TAXATION OF NON - RESIDENTS

1. Jurisdiction of taxpayers

1.1 The Central Board of Direct Taxes by its Notification [S.O. 881(E)] dated 14th September, 2001, setup the offices of the Director of Income-tax (International Taxation) at Delhi, Mumbai, Kolkata, Chennai and Commissioner of Income-tax (International Taxation) at Bangalore. This notification came into force with effect from 14th September, 2001 (F.No. 187/5/2001/ITA-I) itself i.e. the date of its publication in The Gazette of India and empowered the Directors to exercise the powers and functions of a Commissioner of Income-tax including those relating to tax deduction at source under sections 195 and 197 of the Income-tax Act, 1961. Vide CBDT's Notification [S.O. 888(E)], dated 17th September, 2001 (F.No. 187/5/2001/ITA-I), the post of Director General of Income-tax (International Taxation) with Headquarters at New Delhi was notified. The jurisdiction of Director General of Income-tax (International Taxation) extends over the jurisdiction of the Directors of Income-tax (International Taxation) at Delhi, Mumbai, Kolkata, Chennai and Commissioner of Income-tax (International Taxation) at Bangalore. The jurisdiction of the Directors/Commissioners of Income-tax extends over the territorial area assigned to them and is in respect of the following persons or class of persons :-

- a. non-residents, including foreign companies within the meaning of sub-section (23A) of Section 2 of the Income-tax Act, 1961 having a permanent establishment in terms of the applicable Double Tax Avoidance Agreement or having a business connection or source of income in India.
- b. all persons making payments to non-residents in terms of sections 195 and 197 of the I.T. Act, 1961.

1.2 Therefore, tax assessments are made by the officers of the Director of International Taxation in the cases of all non-residents and foreign companies in the territorial area assigned to each Director/Commissioner (International Taxation). All applications u/s 195 and 197 filed by the deductor or deductee of tax, are also processed by the officers of the Director of International Taxation within the territorial jurisdiction assigned.

1.3 In places other than Delhi, Kolkata, Chennai, Bangalore and Mumbai, the Chief Commissioners of Income-tax continue to exercise their jurisdiction over all non-residents and foreign companies within their regions. Their jurisdiction shall be governed by Notification No. 19/2001 dated 18/1/2001 (F.No. 186/10/2000-ITA-I)

2. Domestic and treaty law

2.1 Two main principles underlie the basis of international taxation, the source or situs principle and the residence principle. Under the source principle, a country taxes all income earned from sources within its territorial jurisdiction. Under the residence principle, a country taxes the world- wide income of persons residing within its territorial jurisdiction. There are countries that combine both the source and the residence principle. India falls in this category. Another principle of taxation which is combined with the source and residence principle, is the nationality or citizenship principle as in U.S.A. The application of the tax principles by countries, gives rise to international double taxation, defined by the International Fiscal Association as “ the result of overlapping tax claims of two or more States”. The Double Tax Avoidance Agreements (DTAA) entered into by India provides relief from double taxation and improve investment flows. In respect of certain items of income, the treaties give the absolute taxing rights to the country, where the taxpayer is a resident and consequently the source country sacrifices tax. In respect of other items of income the treaties give taxing right to both the country of residence as also the source country. Double taxation is eliminated, by the country of residence giving credit to the tax paid in the country of source or by exempting the income, which has suffered tax. In this regard it may be stated that some countries like India where the credit system is followed, provide for elimination of double taxation by

giving credit for the tax paid in the country of source. Most of India's treaties provide for giving credit of tax paid, to the limit of tax paid or payable on the same income in the source country. In case a resident of India earns any income outside India and tax is paid in a country with which there is no DTAA, he would be entitled to a deduction in India, of the tax paid, in accordance with section 91 of the Income-tax Act. The tax paid shall be calculated on such doubly taxed income at the Indian rate of tax or the tax rate of the foreign country, whichever is lower.

2.2 Assessment of non- residents and foreign companies is governed both by domestic law i.e. the Income-tax Act, 1961 and treaty law. Section 90(2) provides for a treaty override and in cases where the provisions of the Act are more beneficial, the latter shall apply. Consequently, even though in the case of foreign companies, business income may accrue or arise in India, the same shall not be taxable in India unless there is a 'permanent establishment' (PE) in terms of the relevant treaty. The term PE is defined and explained in the Article 5 of each treaty, which India is a signatory to. The tax may be leviable only in respect of the income attributable to the P.E. However royalties, fees for technical services, interest income and dividends arising in India is taxable in India even in the absence of a P.E. of the foreign company.

2.3 Country accounts are normally maintained by a foreign company having a PE/ branch office in India. However, if the Assessing Officer is of the view that the income of a non-resident cannot be definitely ascertained, the

income may be calculated in terms of Rule 10 of the Income tax Rules, 1962.

The income in such cases may be calculated :-

- i. at such percentage of turnover as may be considered reasonable, or
- ii. at such amount which bears the same proportion to the total profits and gains of the business of the non- resident as the receipts arising in India bear to the total receipts of the business, or
- iii. in such manner as the Assessing Officer may deem suitable.

2.4 Special provisions for computing profits and gains in the case of non- residents having different types of business, have been incorporated in section 44B, 44BB, 44BBA and 44BBB. In the case of non- residents having income from business or profession, the deduction relatable to head office expenditure is restricted and governed by the provisions of section 44C. Further section 44D provides that no deduction in respect of any expenditure or allowance is allowable to foreign companies in computing their income from royalty or fees for technical services.

3. Tax deduction at source

3.1 Tax deduction at source in respect of payments to non residents, is governed by the provisions of sections 195 and 197 of the Income-tax Act, 1961. The person responsible for making the payment to a non-resident has to deduct tax at the time of credit of such income to the account of the payee or at the time of payment in cash or by the issue of cheque or draft or by any other mode, whichever is earlier. The deduction of tax, however, should be made only where the payment in question is chargeable to tax under the provisions of the Act. The Income-tax to be deducted is at “the rates in force”. For the purposes of deduction of tax u/s 195, the rate or rates in force are as specified in Part II of the First Schedule of the Finance Act of the relevant year or the rate of income tax specified in a Double Tax Avoidance Agreement. In case the rate of tax laid down in a treaty in respect of deduction of tax at source is lower, the same should be applied. The rate of deduction of tax is on gross payments. The rates of tax specified in DTAAAs, are in respect of interest, royalty and technical fees, and dividends. In the case of any other income chargeable to tax, the rate of tax shall be the tax rate applicable to foreign companies. The Finance Acts prescribe the rates of tax deduction at source in the case of payments for winnings from lotteries, games, horse races etc.

3.2 In respect of payments to non-residents, which are chargeable to tax no remittance, was earlier allowed to be made without a no objection certificate from the Income-tax department. However, in view of the CBDT Circular Nos. 759 dated 18.11.1997, 767 dated 22.5.1998 and Circular No, 10/2002 dated 9-10-2002, the person making the payment to the non-resident can do so without obtaining an NOC from the Income tax department. This remittance can, however, be made only if the person

making the payment to the non-resident files an undertaking addressed to the Assessing Officer along with a chartered accountant's certificate. The proforma of the certificate to be issued by the chartered accountant provides details of the nature of the payment being made to the non-resident as also the rate of tax applied. The undertaking to be furnished by the deductor of tax states, that in case tax actually payable on the amount of remittance has either not been paid or there is a shortfall in the tax deducted, the same would be paid by him. The undertaking is to be signed by the person authorized to sign the return of income of the person making the payment.

3.3 There is no provision under the Income-tax Act, 1961 for granting a refund of tax deducted at source under section 195 to the person deducting the tax. The CBDT, through circular No. 769 dated 6th August, 1998 laid down a procedure for granting of refund to the deductor where tax has been deducted at source u/s 195. On reconsideration, circular No. 769 was revoked and refund to the person deducting tax at source u/s 195 is allowable only in accordance with the provisions of circular No. 790 dated 20th April, 2000. In some cases, tax is deposited into the Government account after deduction of tax at source u/s. 195, but the contract is cancelled and no remittance is actually made to the non-resident. In certain other cases the remittance is made to the non-resident but the contract is cancelled. In these types of cases, no income can be said to accrue to the non-resident, due to cancellation of the contract. On this basis, the Board laid down in Circular no. 790 that such amount deducted could be refunded, with prior approval of the Chief Commissioner concerned, to the person who deducted it from the payment to the non-resident u/s. 195. The refund can be adjusted against any existing tax liability of the deductor of income tax, under the Income-tax Act 1961, Wealth-tax Act, 1957 or any other direct tax law. No interest u/s. 244A, is admissible on refunds to be granted in accordance with this circular.

3.4 Section 172 of the Income-tax Act, 1961 provides for the taxation of non-residents from shipping business. Where a ship belonging to or chartered by a non-resident carries passengers, livestock, mail or goods shipped at a port in India, seven and a half per cent of the amount paid or payable (in or out of India) on account of such carriage shall be deemed to be the income of the charterer or owner of the ship (Section 44B). Section 172 deals with the levy and recovery of tax before a ship leaves a port in India. Before the departure of a ship from any port, the Master of the ship is required to furnish to the Assessing Officer a return of the amount paid or payable to the owner or charterer for the carriage of passengers, livestock, mail or goods. The A.O., may, however, waive this condition and allow the ship to depart if the Master of the ship makes satisfactory arrangement for the filing of the return and payment of taxes by any other person. In such cases the return has to be filed within 30 days of the departure of the ship. The income is assessed at 7.5% of the charges /freight payable to the owner or charterer of the ship. The A.O. is empowered to call for any accounts or documents to determine the tax payable. The owner of the ship can claim for an assessment of his total income before the expiry of the assessment year relevant to the previous year in which the income is earned. Any payment made by him under this section shall be treated as a payment in advance and adjusted with the tax found to be payable/refundable on assessment.

3.5 Under most of the DTAA's, where India is a signatory, the income from shipping business is taxable in the country of residence of the owner of the ship. The exemption from

taxation in respect of profits of a ship owned by a resident of the United Kingdom is only in respect of profits from the plying of the vessel in international traffic. Consequently if a foreign ship earns income from the transportation of cargo from one port in India to another, there would be no exemption and the provisions of sections 44B and 172 would come into operation. The following details may be requisitioned for deciding as to whether treaty benefit should be allowed :-

- i. Name and complete address of the owner of the vessel;
- ii. Name and complete address of the charterer, if any;
- iii. Evidence of residence of the person claiming DTAA benefit;
- iv. Copy of the charter agreement duly signed by the owner and the charterer;
- v. Indemnity bond of the agent to be appointed u/s 163;
- vi. Amount of freight receivable in Indian rupees and tax payable thereon;
- vii. Detail of the loading port and the port where the cargo, livestock or passengers is to be discharged;
- viii. Certified copies of the translation into English of the documents written in any other international language

4. Exchange of information

4.1 All the treaties entered into India provide for an article on exchange of information. The Joint Secretary (Foreign Tax and Tax Research) in the CBDT is the competent authority for each of the treaties entered into by India. All exchange of information between India and a treaty partner country shall therefore be routed through the competent authority in India. Consequently, if information is required in respect of any taxpayer from another country, a letter should be addressed by the Commissioner or Chief Commissioner to the Joint Secretary (FT&TR). The check list for making a request for obtaining information in respect of an assessee is as under:-

- i. Name and address of the Indian taxpayer.
- ii. Name and address of the foreign taxpayer.
- iii. Whether the assessee is under investigation /proceedings are pending? If so, details of the case against him.
- iv. Years under investigation. Specific information required-in the form of a Questionnaire.

4.2 Under the 'exchange of information' Article, the information that can be obtained from most countries, is what is necessary for carrying out the provisions of the agreement or of the domestic laws. Most foreign countries insist that some proceedings should be pending in the case of a taxpayer, before information can be sought. The financial year(s) for which the information is sought by the Assessing Officer must also be stated in the requisition sent to the Joint Secretary in CBDT. The information received is to be treated as secret and can be disclosed only to persons or authorities (including courts and administrative bodies) involved in assessment or collection of the 'enforcement or prosecution in respect of, or determination of appeals in relation to, the taxes' to which the agreement applies. On similar lines, requests may be received by the field formations from foreign countries [through the Joint Secretary (FT&TR)] to send information in respect of certain taxpayers. The information sought should be obtained in the same manner as one would in the case of a resident who is under investigation.

5. Mutual Agreement Procedure

5.1 The tax treaties entered into by India provide for a dispute resolution mechanism and is known as the Mutual Agreement Procedure (MAP). A resident of one country may approach the competent authority of the country of which he is resident if he is aggrieved and is of the view that the action of the tax authorities of either one or both of the treaty partner countries is not in accordance with the provisions of the treaty. Generally there is a limitation of three years from the time of the action of the tax authorities during which the taxpayer must present his case to the competent authority. If the competent authority is satisfied that the case of the taxpayer is correct and that the action of the tax authority of the other country is not in consonance with the provisions of the treaty, he shall approach the competent authority of the treaty partner country to arrive at a satisfactory solution and resolve the case by mutual agreement. In this manner, the competent authorities endeavour to resolve disputes or doubts arising in the interpretation or application of the treaty. The Mutual Agreement proceedings in India, carry on irrespective of the remedies provided in the domestic law in respect of appeals before the Commissioner of Income-tax (Appeals), ITAT etc. The Commissioner of Income-tax (Appeals) shall continue to dispose of the appeal in a case, which is under MAP. Any agreement reached between the competent authorities in a particular case will however override the decision of the Assessing Officer, Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal. The Assessing Officer shall, on receipt of a decision under MAP, implement the same, and withdraw all appeals, where necessary. The CBDT has in February, 2003, set a time of ninety days within which the Assessing Officer must implement the decision under MAP in certain cases. The order in such cases should be passed under the relevant Article of the DTAA with the other country.

6. Collection assistance under the DTAA and section 228A of the I.T. Act, 1961

6.1 In some of the India's DTAA's, there is a provision for collection assistance whereby the treaty partners undertake to help each other in the collection of taxes. The request for assistance is to be processed through the office of the competent authority and therefore, all claims of assistance have to be addressed to the Joint Secretary (FT&TR). While seeking assistance, a certificate would have to be furnished by the Assessing Officer that the collection of tax for which assistance is being sought has been finally determined and that there is no further right of appeal left. Section 228A of the Income-tax Act, 1961 also provides that where an agreement is entered into by the Central Government with the Government of any other country for recovery of tax, the Tax Recovery Officer (TRO) shall, on receipt of a certificate of recovery of tax from the foreign country, proceed to recover the amounts specified in the certificate. The TRO should proceed to collect the tax from the assets of the non-resident in the manner that he would proceed to recover an amount specified in a certificate drawn up by him u/s. 222. After deducting the expenses incurred in connection with the recovery proceedings, the balance amount should be remitted to the competent authority in the CBDT. Similarly, where an assessee is in default in making the payment of tax in India, the TRO may, if the assessee has assets in a country with whom India has the provision of collection assistance in the DTAA, forward a certificate u/s 222 to the CBDT for being forwarded to the relevant country. In such cases all efforts to collect taxes should have been exhausted before making a request to the other country.

Chapter- 5
SPECIAL PROCEDURE RELATING TO TRUST AND
OTHER INSTITUTIONS

1.1 Various provisions regarding exempted institutions etc. are administered mainly by Director General of Income Tax (Exemptions) and the Directorates of Income tax functioning under him in seven metropolitan cities, namely, Delhi, Kolkata, Ahmedabad, Mumbai, Chennai, Hyderabad and Bangalore. However, in areas not covered under the jurisdiction of the aforesaid seven Directorates, the provisions are administered by the territorial Commissioners of Income-tax and other statutory authorities functioning under them.

1.2 In fact, the Act mentions only CIT as a statutory authority controlling an Assessing Officer. In order to fill this lacuna, the Board has authorized the Director of Income tax (Exemptions) [DIT(E)] to discharge all the functions of CIT in the aforesaid metropolitan cities [Notification S.No. 880(E) dated 14.09.01].

2. Registration of trusts and institutions

2.1 The legal framework, granting exemption to a public charitable trust, a company registered under section u/s 25 of the Companies Act, or a society registered under the Societies Registration Act, 1860 etc., is contained in the following provisions :-

- i. Section 2(15);
- ii. Section 2(24) (iia);
- iii. Section 10
- iv. Section 11,12, 12A, 12AA and 13; and
- v. Section 35(1)(ii) and 35(i)(iii).

2.2 Section 12A stipulates that the provisions of section 11 and section 12, regarding exemption of income, would not be applicable to the above entities unless an application for registration is made to the CIT / DIT concerned within a period of one year from the date of creation. The CIT /DIT however, may condone the delay for good and sufficient reasons.

2.3 The application has to be made in Form No.10A. The application has to be accompanied by the following documents:-

- i. a copy of the instrument by way of which the trust or institution was created; and
- ii. if it existed in years prior to the year in which the application is made, accounts of the prior years (not exceeding three years) [Rule 17A]

2.4 On receipt of the application, the CIT /DIT has to pass an order either registering the applicant or rejecting his application. Registration may be rejected on the ground that the trust/institution or its activities are not genuine. Such an order has to be passed within a period of six months from the end of the month in which the application is made [Section 12AA (2)].

2.5 In view of the limitation involved in registration of trusts and institutions, a register is maintained in the office of CIT /DIT(E) on monthly basis, recording the receipt and disposal of applications. The proforma is indicated below:-

| S.No. | Date of Receipt of Application | Month _____, Name | PAN No. | Remarks |
|-------|--------------------------------------|----------------------|---------|---------|
|-------|--------------------------------------|----------------------|---------|---------|

2.6 The CIT /DIT(E) should satisfy himself with regard to:-

- i. objects of the trust/institution and
- ii. genuineness of its activities.

2.7 Whether, the object(s) constitute charitable purpose(s) u/s 2(15) has to be enquired into. The following points should be examined before grant of registration:-

- iii. there should be a legally existent entity, which can be registered;
- iv. it should have a written instrument for its creation;
- v. all its objects should be charitable or religious in nature;
- vi. its income and assets should be applicable towards its objects only, as indicated in the object clauses and in the other rules and regulations that govern its conduct;
- vii. no part of its income ought to be distributable or distributed, directly or indirectly, to its members, directors, founders etc.;
- viii. in case of its dissolution, its net assets after meeting all its liabilities, should not revert to its founder, members, directors, donors etc., but used for its objects.

2.8 The applications for registration are received in the office of CIT /DIT(E). These are entered in the register, mentioned in paragraph 2.5 (Supra). The following procedure should be adhered to:-

- i. it should be ensured that the application has been properly filled in and it is accompanied by requisite documents and accounts etc. [Paragraph 2.3 (supra)];
- ii. the instrument of creation should be perused to find out violations of any condition mentioned in paragraph 2.7 (supra);
- iii. verification of actual existence should be made either by sending a letter seeking its compliance or by local enquiry.;
- iv. the trust or institution must be asked to cure defects, if any, mentioned at (i) and (ii) in para 2.7 above under the directions of CIT /DIT(E) This can be done only in respect of curable defects;
- v. on getting complete information, a self-contained note should be put up to CIT /DIT(E) suggesting that the entity may be registered or its application rejected;
- vi. in case the application is put up for rejection, a letter/show cause notice should be issued under the directions of CIT /DIT(E); and

vii. on receipt of the reply or in case of failure to reply, the matter should be put upto CIT /DIT(E) with recommendations for an appropriate order in writing.

3. Approval u/s 80G(5)

3.1 Apart from exemption of income of the trust or institution etc. as provided in section 11 and section 12 of the Act, the donor to such trust or institution is also entitled to a deduction on account of the donation from his gross total income. The amount of deduction is prescribed in section 80G (2)(iv). Section 80G(5) contains preconditions, which must be satisfied cumulatively, before the donation to the institution or fund becomes tax deductible in the hands of the donor. These conditions are summarized as under:-

- i. the income of the person should not be included in total income by virtue of the provisions contained in sections 11 and 12, section 10(23), section 10(23AA) or section 10(23C);
- ii. the income of the entity, as per its rules should be applicable wholly for a charitable purpose (emphasis supplied). The term “charitable purpose” does not include religious purpose [Explanation 3 below section 80G]. However, section 80G (5B) allows some relaxation regarding incurring of expenditure for religious purpose(s).
- iii. the fund or institution should not be expressed for the benefit of any particular religious community or caste;
- iv. it should maintain regular books of its receipts and expenditure; and
- v. It should be approved by the CIT /DIT(E) for the purposes of making its donors eligible for grant of deduction under this provision.

Thus, approvals to charitable trusts are granted in fulfillment of the last condition indicated above.

3.2 Rule 11 AA prescribes that an application for approval u/s 80G shall be made in triplicate in Form no. 10G. It shall be accompanied by copies of following documents;-

- i. order of registration u/s 12A, notification u/s 10(23) or notification u/s 10(23C);
- ii. note on activities conducted either since its inception or in the last three years, if the trust/institution was created more than three years ago; and
- iii. its accounts since inception or last three years, again, if it was created more than three years earlier.

The rule also provides that the application in Form no. 10G shall be disposed off within six months of the date of its receipt by the CIT /DIT(E). Thus, limitation is involved in the disposal of such an application.

3.3 No formal procedure has been prescribed either by the Act or the Rules. However, if it is intended to reject an application, the trust or institution, should be given an opportunity of being heard. The time taken by it in complying with the directions of the CIT /DIT(E) with regard to filing of evidence or information shall be excluded in the computation of the aforesaid time limit.

The CIT/DIT(E) can grant approval for a period upto five years. However, the approval is generally granted for three years. Thus, it is clear that a trust or institution may need repeated approvals. The Act or the Rules do not distinguish between initial approval or subsequent approval.

3.4 The applications received in Form no. 10G are entered in a register maintained in office of the CIT /DIT(E). The proforma is indicated below:-

| S.No. | Date of receipt | <u>GIR</u> PAN No. | Whether application is for initial approval or subsequent approval | Remarks |
|-------|-----------------|-----------------------|--|---------|
|-------|-----------------|-----------------------|--|---------|

3.5 The application is examined to ensure that various columns are properly filled in and it is accompanied by documents mentioned in paragraph 3.2(Supra). The law regarding grant of approval u/s 80G(5) has already been discussed in paragraph 3.1 (supra). The CIT /DIT(E) should satisfy himself about the first four conditions mentioned there. In the case of initial approval, there may be no books of account. Therefore, in such a case, he should ensure that the instrument of creation of the institution should contain a clause to this effect. After satisfying himself about fulfillment of the essential conditions on the basis of the instrument of creation, the CIT /DIT(E) may approve the institution u/s 80G(5) by way of a written order. However, if any of these conditions is not satisfied, a show cause notice should be issued under his direction to give an opportunity of being heard to the assessee. After hearing the assessee, the CIT/DIT(E) may pass an appropriate order in writing either approving the trust or institution, or rejecting its application. In case the trust or institution etc. is approved, the period of approval, not exceeding 5 years, may also be mentioned in the order. Rule 11AA(4) requires that the approval should specify the assessment year or the years for which it is valid.

3.6 In case of subsequent approval, a report is obtained by the CIT/DIT(Exemp.) from the Assessing Officer. The proforma is indicated below:-

Report on 80G application

| | | |
|-------|---|---|
| i. | Name of applicant | : |
| ii. | P.A. No. | : |
| iii. | Details of returns filed | : |
| iv. | Details of denial of exemption, if any | : |
| v. | Whether investment of funds is as per provisions of section 11(5). | : |
| vi. | Any violation of section 12 & section 13. | : |
| vii. | Demand outstanding, if any | : |
| viii. | A brief indicating amount of donation raised and utilised and the activities undertaken during the period of earlier approval | : |
| ix. | Remarks | : |

Dated_____

DDIT/ADIT/ITO(E)
DCIT/ACIT/ITO

3.7 The application and the report of the Assessing Officer are examined with reference to the accounts and note on activities. It has been mentioned earlier that the Act does not distinguish between initial and subsequent approvals. Therefore, in the case of subsequent approval also, the question of fulfillment of conditions mentioned in paragraph 3.1 (supra) is examined. If the trust or the institution satisfies these conditions, the approval is granted as indicated in paragraph 3.5 (supra). In case it is intended to reject the application, a show cause notice is issued to the assessee under the directions of the CIT/DIT(E) asking it to explain why the application may not be rejected. After hearing the assessee, appropriate action is to be taken, namely, either rejecting the application or granting approval for a certain number of assessment years, ordinarily not exceeding five.

4. Approval u/s 10(17A)

4.1 This section inter-alia exempts from tax any award/reward made in cash or kind, instituted by a body in the public interest and approved by the Central Government on that basis. The applications received from institutions for approval by the Central Government are processed in the office of the CIT /DIT(E), and forwarded to the DGIT(E) with his comments. The DGIT(E) finally forwards these applications to the Board with his recommendation on whether the award/reward should be exempted or not.

4.2 The applications received from assesseees are entered in a register maintained in the office of CIT/DIT(E). The proforma is indicated below:-

- | | | |
|------|--|---|
| i. | Date of receipt of application | : |
| ii. | Date of forwarding to the Assessing Officer: | : |
| iii. | Due date of the report | : |
| iv. | Date of the receipt of the report | : |
| v. | Date of forwarding to the DGIT(E) | : |
| vi. | Remarks | : |

4.3 The only condition for grant of approval mentioned in the section is that the award should be instituted in the public interest. No rule has been framed under this section for the guidance of field officers. The assessee should be asked to file details mentioned in the proforma indicated below: -

- | | | |
|------|---|---|
| i. | Name, address & P.A. No. of the institution | : |
| ii. | Instrument of creation of the institution containing inter alia the Memorandum of Association and rules & regulations | : |
| iii. | Whether the institution is registered u/s 12A, or notified or approved u/s 10(23), 10(23C), 35(1)(ii) or 35(I) (iii) | : |

- iv. Purpose of award/reward :
- v. Copy of the scheme of the award/reward and rules and regulations for grant of award/reward :
- vi. Amount and periodicity of the award/reward :
- vii. Method of selection of the persons to be awarded/rewarded :
- viii. Constitution of the jury/selection committee including inter alia name, address & qualification of its members :
- ix. Name, address and qualification of the persons given awards/rewards, if any, in the last five years. :
- x. Copies of audited accounts since inception or last three years whichever is less; :
- xi. Any other information in support of approval of the award/reward :

4.4 On receipt of this information, the application and the information is forwarded to the Assessing Officer. His report is obtained through the Addl./Joint Commissioner or Director (E). The application and the report are examined. Finally, a report is prepared in which a recommendation is made either to approve the award/reward or to reject the application. The following points should be examined while preparing this report:-

- i. Whether the award/reward is in public interest;
- ii. Whether the object clauses of the institution permit grant of the award/reward;
- iii. Whether the grant of award/reward is in furtherance of aims and object of the institution;
- iv. Whether the objects of the institution are charitable in nature;
- v. Whether the selection criteria are fair and reasonable; and

5. Notification under section 10(23)

5.1 This section exempts from tax incomes of certain notified sports associations or institutions. These bodies should have been established in India, should have been formed with the object of control, supervision, regulation or encouragement of the games of cricket, hockey, football, tennis in India, or any other sports notified by the Central Government. While four games have been specified in this section itself, the Central Government has so far notified 32 other sports.

5.2 Provisions of sections 11(2), 11(3) and 11(5), applicable to charitable and religious trusts or institutions regarding accumulation of income etc. and investment of surplus funds, are applicable to the association or institutions notified by the Central Government under this section. The Board has framed rule 2C under this section. This rule in turn specifies form 55 for making applications for exemption under this provision. The Central Government is the notifying authority for associations or institutions prescribed for this purpose. Applications are processed in the office of CIT/DIT(E) and forwarded to DGIT(E) for onward transmission to the Board.

5.3 The applications received from the assesseees are entered in a register maintained in the office of CIT/DIT(E). The proforma has already been indicated in paragraph 4.2 (supra).

5.4 The Board has not prescribed any proforma under which the report is to be prepared in the office of the CIT/DIT(E). Reports may be sent along with the proforma prescribed by the Board for reports on applications made u/s 10(23C)(iv)/(v). In view thereof, some columns of the aforesaid proforma may not be applicable in the context of this section. The proforma is indicated below: -

Report on Application u/s 10(23)/(23C)(IV)/(V)

| | | |
|---|---|--|
| 1 | (a) Name & address of the association or institution | |
| | (b) Legal status (it may be specified if the applicant is a trust or a fund or an institution) | |
| | (c) Clause of sec.10 under which notification is sought | |
| | (d) A.Y.(s) for which notification is sought | |
| | (e) The Assessment Years for which notification was sought earlier. | |
| | (f) Whether the application has been made in the prescribed form. | |
| 2 | Objects of the trust/fund/institution. Please specify the clause of the deed /memorandum. | |
| 3 | A report on the activities of the applicant | |
| 4 | The Assessment history of the applicant including:- (a) Whether it has been held to be exempt u/s 11 ? (b) Whether any penalty has been initiated/levied? (c) Whether any recovery is outstanding? | |
| 5 | In case of notification u/s 10(23C)(iv), the impact the trust has/had by its activities on broad sections of the society. | |
| 6 | In case of notification u/s 10(23C)(v), whether the affairs of the applicant are administered and supervised in a manner which ensures proper application of income for the objects? | |
| 7 | A list of trustees/managing council members, along with the finding as to whether they derive any benefit by virtue of their association with the applicant. | |
| 8 | Copies of annual reports whether available. | |
| 9 | (a) Position of compliance with the FCRA in respect of donations received from outside India, if any. | |
| | (b) Copies of the audited a/cs for the last 3 years along with the note on examination of a/cs and on the activities as reflected in these a/cs. (Please specify amounts spent for various objects of the trust/institution separately - specific items in the I & E a/c may be pointed). | |
| | (c) In case the trust has shown receipts from pursuit of business, the precise nature of the same and the finding as to whether it is incidental to its objects. The figures of income that would have been liable for tax u/s 11(4), but for exemption u/s 10(23C) in the last 3 | |

| | | |
|----|--|--|
| | years, may also be indicated. | |
| | (d) Whether separate books of a/c of such business are maintained by the applicant. | |
| 10 | (a) Whether the application of accumulated income is wholly and exclusively for the objects of the applicant. | |
| | (b) Whether the funds of the applicant have been invested in the forms specified in sec.11(5), if no, then please give details. | |
| | (c) Whether the rules governing the applicant contain provision for transfer or application of the income or assets of the applicant for any purpose other than the purpose for which the applicant was constituted. | |
| | (d) Whether any provision of sec.11,12,12-A or 13 of the I.T.Act,1961 has been violated by the applicant? | |
| 11 | Any other information that the A.O. May like to give. | |
| 12 | Comments of the A.O. For granting exemption u/s 10(23C)(iv). Please specify period of recommendation also. | |

Date :

CIT /DIT(E)

This proforma should be filled in carefully, having regard to provisions of sections 10(23), 11(2), 11(3) & 11(5). Annual accounts of last three years and annual reports of last three years, if available, are to be enclosed with the report.

5.5 On the basis of the application of the assessee, proforma report and recommendation of the Assessing Officer, and the report of the Joint CIT /Jt. DIT(E), a report is prepared in the office of CIT /DIT(E) and forwarded to the DGIT(E). The following points should be examined before preparing this report:-

- i. Whether the objects of the association or institution are to control, supervise, regulate or encourage any game or sports;
- ii. Whether the game or sports are contained in section 10(23) or notified by the Central Government under this section.;
- iii. Whether, having regard to documents and accounts obtained during the course of enquiry, the activities are genuine;
- iv. Whether provisions of sections 11(2) & 11(3) regarding accumulation and application of such income are followed;
- v. Whether surplus funds are invested in accordance with provisions of section 11(5);
- vi. Whether the affairs of the association or institution are properly managed by the constitution of a managing committee etc.;
- vii. Whether the trustees or managing committee members derive any benefit from the association or institution;
- viii. Whether the affairs of the association or institution are administered and supervised in a manner, which ensures application of income to the objects only.

5.6 It may be mentioned here that this section has been omitted by Finance Act, 2002, w.e.f. 1.4.2003.

6. Notification/approval under section 10(23C)

6.1 Section 10(23C) (iv), (v), (vi) & (via) deals with exemption of income of various kinds of charitable institutions which are either notified by the Central Government or approved by the prescribed authority. Clause (iv) deals with exemption of income of any fund or institution established for charitable purposes notified by the Central Government taking into account the objects of the fund or institution or its importance throughout India or throughout any state or states. Sub-clause (v) deals with the exemption of income of any trust or institution set up wholly for public religious purposes or public religious or charitable purposes, notified by the Central Government after taking into account the manner in which its affairs are administered and supervised to ensure that the income is applied for its objects. Sub clause (vi) deals with exemption of income of any university or educational institution, approved by the Board, which exists solely for educational purposes and not for purposes of profit, if its annual receipts exceed Rs. 1 crore. And finally, sub clause (via) deals with exemption of income of any hospital or institution, for reception and treatment of persons suffering from illness or mental defectiveness or during convalescence or requiring medical attention or rehabilitation. The hospital or institution should exist solely for philanthropic purposes and not for profit. Its annual receipts should exceed Rs. 1 crore and it should be approved by the prescribed authority and the Board.

6.2 Provisions of section 11(2) and section 11(3) regarding accumulation of income and its utilisation, and provisions of section 11(5) regarding investment of surplus funds, are applicable to such a trust or institution. An application under sub-clause (iv) or (v) of section 10(23C) has to be made in form 56; application under sub clause (vi) or (via) on other hand has to be made in form 56-D. The Central Government is the competent authority to issue notifications u/s 23C (iv) and (v). The Central Board of Direct Taxes on other hand, is the prescribed authority for such purposes u/s 10(23C) (vi) and (via). These applications are processed in the office of CIT /DIT(E) and forwarded with comments to DGIT(E)

6.3 The applications received from the assessee are entered in a register maintained in the office of CIT/DIT(E). The proforma has already been indicated in paragraph 4.2 (supra).

6.4 Instruction No. 1868 dated 3-12-1990 requires that the assessee's application in form 56 should be forwarded with a proforma report, prepared in the office of CIT/DIT(E). The proforma has already been indicated in paragraph 5.4 (supra). Similarly, Instruction No. 1981 dated 5-4-2000 requires that the assessee's application in form 56D should be forwarded with a proforma report, prepared in the office of CIT/DIT(E). The proforma is indicated below:-

Report on application under section 10(23 C)(vi) & (vi a) of the I.T.ACT,1961.

1. (a) Name and address of the applicant/organisation.

- (b) Legal status of the applicant
(it may be specified if the applicant is a trust or a fund or an institution).
 - (c) The clause of sec.10(23C) under which notification is sought.
 - (d) The A.Y.(s) for which notification is sought.
 - (e) Whether the application has been made in the prescribed form.
- 2. Objects of the Trust/fund/institution. Please specify the clauses of the deed/memorandum.
- 3. The aggregate annual receipts of the trust/institution.
- 4. Short summary of the activities of the applicant.
- 5. The assessment .history of the applicant including:
 - (a) whether it has been filing returns of Income-tax regularly, if required to do so?
 - (b) whether its income has been held to be exempt u/s 11 ?
 - (c) whether any penalty/prosecution has been initiated/levied/launched?
 - (d) whether any demand is outstanding.
- 6. Whether the affairs of the applicant are administered and supervised in a manner which ensures proper application of income for the objects thereof.
- 7. A list of trustees/members of the managing council with address and PANs along with the finding as to whether they derive any benefit by their being associated with the applicant.

8. Whether copies of annual report for the relevant years available. If not the latest years for which such reports have been appended.
9. (a) Position of compliance with the Foreign Contribution (Regulation) Act in respect of donations from outside India, if any.
- (b) Copies of the audited a/cs for the last 3 years along with a note on examination of a/cs and on the activities as reflected in these a/c, if any.
- (c) In case the trust has shown receipts from business, the precise nature of the same and the finding as to whether it is incidental to its objects. The amount of income that would have been liable to tax u/s 11(4), but for exemption u/s 10(23C)(vi)/(vi a) in the last 3 years, may also be indicated.
- (d) Whether separate books of a/cs of such business are maintained by the applicant?
10. (a) Whether the application of income is wholly and exclusively towards the objects of the applicant. Year-wise details of the income brought forward from the preceding years and its utilisation toward the avowed objectives?
- (b) Whether the funds of the applicant have been invested in the forms specified in sec. 11(5). If not reasons thereof and the details thereof?
- (c) Whether the rules governing the applicant contain provision for transfer or appellation of the income or assets of the applicant for any purpose other than the purposes for which it was constituted.

(d) Whether any discretionary powers are vested vis-a-vis the utilisation of funds, in any of the trustees/members?

(e) Whether any provisions of sec.11, 12, 12A, or 13 of the I.T.Act,1961 have been violated by the applicant.

(f) Treatment of utilisation of assets/surplus in the event of dissolution/winding up of the trust/fund.

11. Whether a copy of the latest certificate U/s 80G issued by the CIT,if any, has been Enclosed.
12. Whether a copy of communication from the CIT, with respect to the application of the trust/institution for registration u/s 12A, if any, has been enclosed.
13. Recommended/not recommended. If recommended, please specify period for which exemption is recommended.

Date:

CIT/DIT(E)

These proformae should be filled in carefully having regard to statutory provisions contained in sections 10(23C), 11(2), 11(3) & 11(5), and the Board Instructions.

6.5 The proformae prescribed by the Board for forwarding applications under various sub clauses are similar. However, the emphasis under sub-clauses is on different aspects. For sub-clause (iv), consideration has to be given to the charitable objects of the fund and to the territorial importance of the institution. Sub-clause (v) lays greater emphasis on the manner in which the affairs are administered to ensure that the income is applied properly for the objects of the trust. Sub Clause (vi) clearly stipulates that the university or institution should exist solely for educational purposes and not for profit. Therefore, if clauses include any non-educational purposes, the institution would be ineligible for approval. This is because this provision specifically stipulates that the institution should exist for educational purposes only and not for purposes of profit. Therefore, the issue as to how the income of the institution is applied assumes considerable significance. Similarly sub clause (via) lays emphasis on existence solely for philanthropic purposes and not purposes of profit. These points should be kept in mind while preparing proforma reports.

6.6 On the basis of the application of the assessee, the proforma report and the recommendations of the Assessing Officer and his controlling officer, a report is prepared in the office of CIT /DIT(E) and the same is forwarded to DGIT(E). The points mentioned in paragraph 6.5 (supra) may be discussed in detail in this report.

7. Notification under section 35(1)(ii)/(iii)

7.1 Donors to a scientific research association, a university, college or other institution are entitled to weighted deduction of one and one fourth times of the donations paid by them, provided that :-

- i. the association, university, college or institution, as the case may be, is notified by the Central Government for the purposes indicated u/s 35(i)(ii) or (iii) and
- ii. it uses the donations for research purposes.

In order to get the aforesaid benefit, it has to make an application in form 3CF to the Central Government for issue of a notification in the official gazette. These applications are also processed in the office of CIT/DIT(E). The income of an institution notified under section 35(1)(ii) is also exempt from tax u/s 10(21) subject to fulfillment of conditions regarding application of its income for scientific research purposes; its accumulation and use u/s 11(2) and 11(3), and its investment in accordance with the modes prescribed u/s 11(5). If exemption is sought u/s 10(21) also, then, the annexure to form 3CF has also to be filled up by the association..

7.2 The applications in form 3CF are entered in a register maintained in the office of CIT/DIT(E). The proforma has already been indicated in paragraph 4.2(supra).

7.3 Letter No. DGIT(E)/Procedure/95-96/35(1) dated 29.1.97 of the DGIT(E), Kolkata requires that the assessee's application in form 3CF should be forwarded with a proforma report, prepared in the office of CIT /DIT(E). The proforma to be filled in is indicated below:-

Form of report on application for approval U/S35(i)/(ii)/(iii)

| | | | | |
|---|-----|---|---|--|
| 1 | | Name & Address of applicant | : | |
| 2 | (a) | Date of application in Form 3CF | : | |
| | (b) | The period for which approval or continuance of approval is sought | : | |
| | (c) | Clause of section 35(1) under which approval sought –i.e. 35(1)(ii) or 35(1)(iii) | : | |

| | | | | |
|---|--|---|--|--|
| 3 | | Whether it is a renewal application, and, if so, following particular of the earlier notification(s) No. Date | | |
|---|--|---|--|--|

| | | | | | |
|---|-----|-------|--|---|--|
| | | | U/s Validity period Category | | |
| 4 | | | Status of the organisation (whether) registered society /company/trust/any other | : | |
| | | | Copies of the Memorandum of Association, Rules, By-laws or Trust Deed , if not annexed to Form 3CF, may be enclosed | : | |
| 5 | (a) | | Whether undertaking of research is the sole object of the applicant | : | |
| | (b) | | In case of entities where research is not sole object, how far donations received for research are utilised for research and whether separate accounts are maintained for research activities (copy of final accounts relating to research activities should be enclosed). | : | |
| 6 | (a) | | Areas in which research was actually carried on and achievements of research. | : | |
| | | (i) | New Products/process/methods/techniques developed | : | |
| | | (ii) | Improvements in existing products/ (process/methods/techniques). | : | |
| | | (iii) | Import substitution | : | |
| | | (iv) | Patents filed/obtained, if any and if so in whose name. | : | |
| | | (v) | Whether products etc. mentioned in (i) and (ii) above have been commercialised or implemented, and if so, by whom. | : | |
| | | (vi) | Earnings from the patents/trade mark. | : | |
| | (b) | | Areas in which research is intended. Details provided in annual report regarding research to be carried on in future. | : | |
| | (c) | | Whether the norms mentioned in the guidelines of DSIR are being followed actually. | : | |
| | | (i) | Whether the applicant is partnership concern controlled by sister concern/director/ partners thereof or by trustees who are members of the family/partners, share holders of the company/ relative as defined in sec 13(3) of the I.T. Act, 1961. | : | |
| | | (ii) | Whether the main contributors sponsoring donations/research are sister concerns as indicated at (i) above | : | |

| | | | | | |
|---|-----|-------|--|---|--|
| | | (iii) | If reply to (ii) is in affirmative please indicate whether results of sponsored research have been disseminated to public also. Please specify how? | : | |
| 7 | | | In case where income was held exempt, the concerned assessment years and the section under which income was exempted. | : | |
| 8 | (a) | | The latest accounting period for which audited final accounts are available. (If copy thereof is not enclosed with Form 3CF, a copy should be sent). | : | |
| | (b) | | Details of donations exceeding Rs.10,000/- in the last 3 accounting periods. In cases of application u/s 35(1)(iii), the class of business carried on by the major donors together with PAN should be furnished. | : | |
| | (c) | | Whether investments are in modes specified under section 11(5) | : | |
| 9 | | | Whether recommended for approval. If so, the section under which recommended and the period should be specified. | | |

Date:

CIT/DIT(E)

7.4 This proforma has to be filled in carefully, having regard to the provisions of sections 35(1)(ii)/(iii), 11(2), 11(3) and 11(5). As the benefit is sought to be given in respect of scientific or social science research activities it has to be ascertained whether research is the sole object or at least one of the objects of the institution. In case, research is only one of the objects of the institution, it is incumbent upon the institution to maintain separate books of account and furnish an annual Income and expenditure account and a Balance Sheet or (statement of affairs) in respect of its research activities. Such accounts have to be audited by an auditor, who should certify that expenditure incurred was for research work.

7.5 On the basis of application of the assessee, reports from the Assessing Officer and the Addl./Jt. CIT or DIT(E), a report is prepared and forward to the DGIT(E). Following points should be examined before preparing the report:-

- i. whether research is the sole object or only one of the objects of the association or institution. If research is the only object, then the entity is classified as 'association' for notification purposes; and if it is one of the objects, then it is classified only as 'institution';
- ii. whether an income and expenditure account is separately maintained for its research activities and the same is audited by the auditor;
- iii. whether income has been applied or accumulated, as the case may be, for research purposes only;
- iv. whether surplus funds are invested in the modes prescribed in section 11(5) or in research projects completed and research projects intended to be taken up in the ensuing years;
- v. whether the results of the research work have been disseminated to public at large; and
- vi. any benefit granted to the interested person and the major donors.

ASSESSMENT

8. Introduction

8.1 The concept of income under section 11 and section 12 is different from its concept under other provisions of the Act. Voluntary contributions received by a trust or institution are deemed to be its income u/s 2(24)(ia) and section 12(1). However, any contribution made with a specific direction that it will form part of the corpus of the trust or institution is to be excluded from income u/s 12(1). The Finance Act, 2000 made an amendment to this section with effect from 1.4.2001, by which the value of any service, being medical or educational service, made available by a charitable trust etc. to any related person, defined u/ss 13(3)(b)/(c)/(cc)/(d), is deemed to be the income of the trust. Thus, gross receipts excluding corpus donation and value of the services rendered as above constitute income of the trust.

8.2 Section 11(1) allows deduction from the aforesaid income of the sums applied by the charitable trust etc. towards religious or charitable purposes, and the amount accumulated and set apart for application towards charitable purposes, not exceeding 15% of such income. As mentioned earlier, the voluntary contribution received with a specific direction to the effect that it will form corpus of the trust is excluded from income. The amount not applied to charitable objects as aforesaid has to be applied to charitable objects in the immediately succeeding year in which such income accrues or is received, as the case may be. In case of failure to do so, the amount becomes the income of such succeeding year.

8.3 Accumulation and setting apart the income : Charitable trusts are also permitted to accumulate and set apart income for specific purposes as provided under section 11(2). For this purpose, a notice in form 10 has to be given to the Assessing Officer setting forth the amounts and the corresponding purposes. This notice has to be given on or before the due date of filing the return of income u/s 139(1). The Board, by its circular No. 273 dated 3.6.1980, has granted powers to CIT/DIT(E) to extend this time provided the following conditions are satisfied :-

- i. The genuineness of the trust is not in doubt;
 - ii. The failure to give notice to the Assessing Officer and invest the surplus in time was only due to oversight;
 - iii. The settlor or trustees have not benefited by such failure directly or indirectly;
 - iv. The trust agrees to invest the surplus amount before the extension of time is granted; and
 - v. The accumulation was necessary for carrying out the objects of the trust.
- This income has to be invested in modes prescribed under section 11(5). The accumulation is permitted for a period of five years. The Board has also prescribed a register for keeping a record of such accumulation of income. The proforma is indicated below:-

| S.No. | Name & Address of the Trust/institution PAN Number | Assessment Year in respect of which application under Sec. 11(2) | Amount accumulated/set apart | Number of years For which income accumulated/set apart(|
|-------|---|--|------------------------------|---|
|-------|---|--|------------------------------|---|

| | | | | |
|--|--|----------|--|--|
| | | is madeJ | | |
| | | | | |

8.4 Return of income : A charitable or religious trust is required to file suo-motu a return of income under section 139(4A) provided its income, representing aggregate of voluntary contributions, defined u/s 2(24)(iia), exceeds the maximum amount not chargeable to income-tax. form 3A has been prescribed as the return of income for this purpose. The trust has to get its accounts audited and a report of the auditor in Form 10B has to be filed along with the return.

8.5 Income of such a trust has to be computed on commercial principles and not as per the provisions of other chapters of the Act. The Board has accepted this principle vide circular No. 5 LLX-6 dated 19.6.1968. The application of income and income accumulated or set apart constitute the application of income in the relevant year. Even capital expenditure constitutes application of income. The assessee has to take prior approval of the Board under proviso to section 11(1)(c) to incur any expenditure for any charitable expenditure outside India. However, assistance granted to Indian students for getting education abroad is considered to be application of income in India. Ordinarily a charitable or religious trust not exempt under any provision is liable to tax at the normal rate applicable to an A.O.Ps However, in case of default u/s 11(5) or 13(2), the income is liable to tax at the maximum marginal rate under section 164(3).

8.6 A charitable trust may carry on business incidental to its objects. The income of such incidental business is exempt u/s 11(4A) from tax if separate books are maintained. A business undertaking held as property under trust is the corpus of the trust u/s 11(4). The income of this business has to be assessed in accordance with the other provisions of the Act. Thus, principles of commercial income do not apply to such business. The differences between assessed and returned income of such business is liable to tax as this amount is not deemed to be application of income for charitable purposes.

8.7 Miscellaneous : The Central Government or the prescribed authority u/s 10(23C) or u/s 35(1)(ii)/(iii) was not specifically empowered to withdraw the notification or approval. However, such a power is inherent under the general law. Thus, an authority which has the power to grant an exemption also has the power to withdraw such exemption. In a clarificatory amendment, the Finance Act, 2002, has now specifically conferred such power in case any or all of the conditions of the relevant notification or approval have been violated. The procedure for assessment has also been modified in such a case and the time taken from the date when the A.O. reports the default to the competent authority to the time of receipt of the competent authority's order by him is excluded from the limitation period.

Chapter- 6

ISSUE AND SERVICE OF NOTICES

1.1 Issue and service of statutory notices form an important part of any proceedings under the Income-tax Act. Notices generally serve two purposes:-

- i. they give the assessee an opportunity of being heard and thus function as a tool for ensuring natural justice; and
- ii. they also act as a means for obtaining information on the assessee and his transactions.

1.2 Any order passed by an income tax authority can be declared null and void if there was no valid service of the relevant statutory notice. Hence it is imperative to ensure the following:-

- i. timely issue of the correct notice in the prescribed format.
- ii. timely and valid service of such notice
- iii. maintaining proper record of both issue and service.

2. Issue of notice

2.1 The checklist given below may be used while issuing any notice:-

- i. Is it the proper notice to be issued?
- ii. Is it in the prescribed format?
- iii. Are inapplicable words or clauses struck off?
- iv. Is it addressed to the correct person? (A notice can be addressed in the case of:
 - a. Firm: any member or manager
 - b. HUF: manager or any adult member
 - c. local authority: principal officer
 - d. company: principal officer
 - e. AOP or BOI: principal officer or any member
 - f. Any other person (except individual): any body who manages and controls the affairs of the person.)
- v. Is the address correct?
- vi. Are the name and status of the assessee correctly mentioned?
- vii. Is the assessment year correctly mentioned?
- viii. Is the person addressed given a reasonable time to respond? (In cases where a minimum time limit is prescribed in the law, time given in the notice should not be shorter than that)
- ix. Are the date, time and venue of hearing given?
- x. Are the requirements such as the books to be produced or information to be furnished or requirement of personal attendance clearly specified in the notice?
- xi. Is the notice signed and seal affixed?

2.2 Issue of a notice should be entered in the order-sheet. In cases where reasons for such issue are to be recorded, the entry for such reasons must precede the actual issue.

3. Service of notice

3.1 The original notice is to be kept in the file and a copy served on the person concerned. As per the provisions of section 282 a notice may be served either by post or as if it were a court summons under the Civil Procedure Code.

4. Service by post

4.1 The procedure for service by post is given in section 27 of the General Clauses Act. Requirements for valid service by post are:-

- i. Proper addressing
- ii. Prepaying
- iii. Sending by registered post with acknowledgment due.

4.2 The service of notice is effected when the letter is delivered in the ordinary course by post. The presumption is that the delivery on the assessee has been effected. This is so even if a third person receives the post. The onus of proving otherwise is on the assessee. If the notice comes back with the postal remark “refused” it will still have the effect of valid service. However, if the assessee denies such refusal on oath the postman must be examined. But if the notice is returned with the postal remarks “Left”, “Not found” or “Not known” valid service can not be presumed.

5. Service on non residents with no agent in India

5.1 In cases where the addressee is a nonresident with no authorized agent in India, the notice should be sent by post.

6. Service of court summons

6.1 The Code of Civil Procedure (Chapter V, Rules 9-30) specifies the manner of service of court summons. It has been recently amended to speed up the due procedure of law. The Code of Civil Procedure (Amendment) Act, 2002 is effective from 1st July 2002.

Rule 9 specifies that a notice can be served in the following manner:

The copy of the notice is to be delivered or transmitted by

- i. Personal service
- ii. By registered post acknowledgement due (RPAD)
- iii. Speed post
- iv. Courier service approved by HC
- v. Other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court.

7. Personal service

7.1 Personal service is effected by serving a copy of the notice on the assessee or his empowered agent, and obtaining the signature of the recipient on the original notice.

7.2 Therefore the notice server can serve the notice on the assessee (or witness as the case may be), his authorized representative or an adult member of his family residing with him. (A servant is not a member of the family for this purpose). The endorsement for service in ITNS 50 is to be pasted on the original notice kept in the file.

7.3 The notice server is generally sent for serving routine notices. In cases where the service of notice is likely to be difficult, an Inspector can be deputed.

8. Service by affixture

8.1 Service by affixture is resorted to in two circumstances:

- i. When the addressee or his agent refuses to sign the acknowledgement for service of notice
- ii. When the serving official, after using all due and reasonable diligence, cannot find the addressee in his residential or business premises within a reasonable time and there is nobody else authorized to receive the notice.

8.2 In the above circumstances, the ITI can effect the service by affixture on his own initiative without waiting for an order from the AO. The copy of the notice should be affixed on the outer door or on a conspicuous part of the business or residential premises. A report is to be drawn up by the ITI, on the facts and circumstances of the service by affixture, specifying the date and time of service and the name of the identifier if any. It should conclude with an affidavit of the ITI solemnly affirming the facts and particulars of service as reported. The report is to be filed as an endorsement to the original notice after being docketed in the order sheet. The report should be verified by an affidavit. In the absence of such an affidavit the Assessing Officer must examine the Inspector on oath.

9. Substituted service

9.1 The Assessing Officer can order the service by affixture or by putting a newspaper advertisement under certain circumstances. Such service is called *substituted service*. This can be resorted to when:-

- i. The AO is satisfied that there is reason to believe that the addressee is keeping out of the way for the purpose of avoiding service.
- ii. The notice cannot be served in the ordinary way for any other reason.

9.2 In these cases the AO is expected to pass a speaking order to the effect that he is satisfied as to the existence of the circumstances, which necessitates substituted service. A detailed noting in the order sheet to this effect will satisfy the requirements. The service can be effected by affixing the copy of the notice upon some conspicuous part of the premises in which the person is known to have last resided or carried on business. If service is sought to be effected by a newspaper advertisement, such advertisement must figure in a daily newspaper circulating in the locality in which the addressee is last known to have resided or carried on business.

10. Service by RPAD and speed post

10.1 Service of notices by these modes is specified in the amended Code of Civil Procedure. Where a notice is sent by Registered Parcel & Acknowledgement Due (RPAD), and the party

refuses to take delivery, or the acknowledgment is lost or mislaid by the postal authorities, or it has not been received by the Court within thirty days from the date of issue of the notice, it is deemed to be a valid service of notice. In such instances, the receipt, issued by the post office registering the tappal, will constitute evidence of service of notice. Notices can now be served by means of speed post, but the amendment is silent on deemed service, as is applicable in respect of RPAD. Until relevant rules are framed, it will be premature to serve the notice through Courier or through fax or other electronic means.

11. Issue of summons

11.1 A summons may be issued under S.131 to enforce the attendance of an assessee or witness or to compel production of books of accounts and other documents on a specified date. A reasonable period of time should be granted for compliance. The summons is served in the same manner as a notice. The person to whom a summons is issued may appear through an authorized representative, unless his personal attendance is specified in the summons. Personal attendance can be specified only if the person resides within the local limits of the issuing authority's original jurisdiction, or at a place less than fifty miles, or two hundred miles (when connected by railway or other public conveyance) from the office. Where a person stays outside the jurisdiction, a commission is to be issued to the officer who has jurisdiction over the place where such person resides, to compel his personal attendance. A letter may be substituted for a summons, if the person is of a rank, entitling him to such consideration. Such letters are to be delivered by a special messenger.

Chapter- 7

WIDENING OF TAX BASE

1. Importance of widening of tax base

1.1 It is important for the Department to ensure that all persons having taxable income are brought in the tax net. Various studies based on sample survey data collected by the National Council of Applied Economic Research and major private market research organisations suggest that the size of the middle class (defined in terms of consumption of fast moving consumer goods) in India may be as large as 10 crore. Even after allowing for agricultural households, dependent family members, and other relevant criteria, the tax base should be far larger than what it presently is. Widening of the tax base raises important equity issues, i.e. if all persons liable to pay tax are brought on tax records, the burden on existing taxpayers can be brought down. Overall level of compliance gets also affected when a large number of persons who are legally required to file returns do not do so. Others then also feel encouraged not to comply with their legal obligation to dutifully pay their taxes.

1.2 One of the possible ways by which a large number of potential taxpayers can be brought in the tax net is to identify them through certain economic indicators and make it mandatory for them to file their returns of income irrespective of the amount of income. A number of such economic indicators can be employed for this purpose.

2. Legal background

2.1 One by six scheme The proviso to Section 139 was amended by Finance Act, 2000 to provide that any person who is not required to furnish a return under Section 139 (1) (b), and who resides in such area as may be specified by the Board by notification in the Official Gazette, and fulfils any one of the stipulated conditions, shall furnish a return of his total income during the previous year by the due date in the prescribed form. The criteria stipulated for this purpose is as follows: -

- i. is in occupation of an immovable property exceeding a specified floor area, whether by way of ownership, tenancy or otherwise, as may be specified by the Board in this behalf;
- ii. is the owner or the lessee of a motor vehicle other than a two-wheeled motor vehicle, whether having any detachable side car having extra wheel attached to such two-wheeled motor vehicle or not;
- iii. is a subscriber to a telephone;
- iv. has incurred expenditure for himself or any other person on travel to any foreign country;

v. is the holder of a credit card, not being an “add-on” card, issued by any bank or institution;

vi. is a member of a club where entrance fee charged is twenty-five thousand rupees or more,

These six criteria are also known as the New Economic Criteria or NEC.

The word “telephone”, was substituted by the words “cellular telephone not being a wireless in local loop telephone” by the Finance Act 2002.

2.2 Extension of the scheme to new urban areas- The Central Board of Direct Taxes, vide Notification No 409(E)10/5/2001 in 121/F. No. 142/ 72/ 2000 - TPL, expanded the applicability of the scheme to all major urban areas by specifying the following categories of immovable properties for the purposes of clause (i) of the first proviso to Section 139(1) -

a. Floor area of 2,000 sq. feet or more in respect of immovable property used for residential purposes (other than huts and kutcha dwellings); and

b. Floor area of 300 sq. feet or more in respect of immovable property used for commercial purposes;

in all urban areas in the country. An urban area is for this purpose defined by the 1991 Census of India and comprises:

i. All places with in a municipality, corporation, cantonment board or any notified town area committee;

ii. All outgrowths of places referred to in (a) above;

iii. All other places which satisfy the following criteria;

b. a minimum population of five thousand;

c. Engagement of at least 75% of male working population in non-agricultural pursuits;

d. a density of population of not less than four hundred persons per sq. Km.

As a result of the above, 4989 towns and other urban areas now stand covered under the scheme from the assessment year 2001-2002 onwards.

2.3 Section 271F provides that if a person who is required to furnish a return of his income, under the proviso to section 139 (1) fails to do so before the end of the relevant assessment year, the Assessing Officer may impose a penalty of five thousand rupees.

3. Sources of information

3.1 Under Section 139A (5)(c) read with Section 139A (8) the Board has issued a notification making it mandatory for every person to quote his PAN in all documents pertaining to the following transactions -

- i. sale or purchase of any immovable property valued at five lakh rupees or more;
- ii. sale or purchase of a motor vehicle, which requires registration by a registering authority;
- iii. a time deposit, exceeding fifty thousand rupees, with a banking company;
- iv. a deposit, exceeding fifty thousand rupees, in any account with the Post Office Saving Bank;
- v. a contract of a value exceeding ten lakh rupees for sale/ purchase of securities;
- vi. opening an account with a banking company;
- vii. making an application for installation of a cellular telephone connection;
- viii. payment to hotels/restaurants of amount exceeding twenty-five thousand rupees.
- ix. payment in cash for purchase of bank drafts or pay orders or banker's cheques from a banking company for an amount aggregating fifty thousand rupees or more during one day.
- x. deposit in cash aggregating fifty thousand rupees or more, with a banking company during one day;
- xi. payment in cash in connection with travel to any foreign country of an amount exceeding twenty five thousand rupees at any one time.

3.2 Rule 114B allows persons who have applied for allotment of PAN but have not been allotted the same to quote their General Index Register Number till such time as PAN is allotted to them. Further under third proviso to Rule 114B any person, who has not been allotted a PAN or who does not have a General Index Register Number and who makes a payment in cash or otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft or through credit card in respect of any specified transaction, can make a declaration in Form 60 giving particulars of such transaction.

4. Responsibility for collection and collation of information

4.1 Role of CIB - At present the C.I.B. is responsible for collecting, collating and disseminating the information in respect of the six new economic criteria to the Assessing Officers.

4.2 Information about immovable properties - The basic source for this information is the records of the Urban Development Authority Municipality, Corporation, Panchayat. These records have information of names and addresses of owners and also the 'floor area'. Persons have to be identified with reference to the 'specified floor area' (the eligible data) for the purpose of the Scheme. Data from the municipal records have generally yielded about 20% of 'eligible

data' (It is about 30% for panchayats). Information can also be collected from the Registrar of Societies, major builders and co-operative housing societies. A city wise street directory of commercial properties can be prepared with the help of postal PIN codes, property tax records, telephone records, and survey of houses/ flats and commercial areas to identify cases of 'occupation' (otherwise than by ownership) of property of specified floor area. This must be done in respect of all urban areas, identifying the floor area of commercial properties. The survey of residential houses and flats need not be undertaken now to identify cases of 'tenancy' or 'occupation' of immovable property of specified floor area.

4.3 Information about motor vehicles - The basic source of information for all four-wheelers ('ownership' as well as 'hire purchase' cases) is the records of the Regional Transport Office. Information can also be collected from distributors and agents of manufacturers of expensive cars and car financing agencies. Another source relates to travel agencies, tour operators, and taxi operators.

4.4 Information about cellular phones - The main sources of information are service providers for cell phones. Under the current arrangements these entities are required to maintain full particulars of their subscribers, including full name and addresses, photograph and proof of identity.

4.5 Information about foreign travel - Forex dealers are the best source of this information. Since non-residents are not covered by the Scheme, information should be collected only about residents. Another source is the immigration office at major airports. The embarkation/ disembarkation cards often do not give correct and complete names and addresses as these are filled up in haste by passengers but passport numbers are generally accurate. A third source comprises travel agents and tour operators.

4.6 Information about credit cards - This information can be collected only from banks and credit card companies within the territorial area of the CIT (CIB). The data pertaining to other jurisdictions should be transferred to the concerned CITs (CIB).

4.7 Information about club memberships - Data should be collected from major social, sports and the health clubs/ discotheques, etc. run by star rated hotels.

5. Format of data to be collected

5.1 It is of utmost importance that the data collected from the above sources (called Source data) is in such a format that it can be compared with the data of taxpayers available in the department i.e. PAN data or the data of returns filed as per the return receipt register (RRR) (called reference data). Even if the source data is on paper format, it should give the full name of the person (without abbreviations) clearly indicating the surname and the first name separately. Father's name should also be given. While writing the address, the name of the city and PIN code should be written in different lines separately from the rest of the address. Other particulars such as dates, amounts should be in separate columns and in standard format. If care is not taken in this regard at the earliest stage it leads to a huge amount of unnecessary work. In extreme cases, entire data may become unusable. In case PAN of the concerned persons is available in the

source data this must invariably be obtained. Since most of the organisations having source data are maintaining computerised records, the source data should be collected on magnetic media in standard ASCII or flat file format so that it can be directly uploaded on CIB software without fresh data entry in the office of CIT (CIB). The CIB software has the functionality of matching source data against reference data against names and addresses even without PAN.

6. Methodology of matching information with existing tax payer database

6.1 Matching with reference data - The source data can be matched with either the PAN data or the data in the computerised RRR received from various ranges, or against PAN data of deductees required to be given in the TDS returns.

6.2 Matching of one by six source data against PAN data - The PAN database is available on the system. It has the particulars of full name, father's name, address, date of birth, status, and gender of all the PAN allottees. CIB software has the functionality of matching this data against any source data. The detailed process of matching has been discussed in the chapter on CIB. It can also be referred to in the user manual of CIB software. The source data must be scrutinised for cleaning and standardisation if it is not in a standard format. The software permits multiple collation and matching, i.e. even partial data from one or more sources can be run against the reference data. The results of matching can be sorted out on the system range wise, according to the jurisdiction particulars previously entered on the system. This can then be communicated to the ranges either on the system or through written communications. The main handicap in matching against PAN database is that the cases where returns have been filed but PAN has either not been applied for or not allotted will be identified for issue of letters or notices.

6.3 Matching of one by six source data against data of computerised Return Receipt Register - In order to identify stop filers/ non-filers, all ranges are required to prepare computerised return receipt registers (RRR) using either the AST software or a special Standalone RRR software, and send these to the CITs (CIB) every month for matching purpose. For this purpose all A.O.s and range Addl./JCITs have been asked to ensure at the stage of filing of returns that the correct PAN (with 10 characters - first five alphabets, next four numerals, and last an alphabet) is quoted on all the returns of income. For this purpose the PAN data of RCCs has also been made available to all CCITs/CITs on off-line media i.e. CDs. The RCCs have also been asked to ensure that before the returns received above, are handed over to A.O.s, the following basic data is captured -

- i. date of filing (system generated)
- ii. acknowledgment no. (system generated)
- iii. assessment year (by default)
- iv. PAN (to be entered)

- v. returned income (to be entered)
- vi. refund, if any (Optional)

In cases where PAN is not allotted and only on application in Form 49A is enclosed, information about the name and address will also have to be captured in the RRR. A range-wise compiled copy of the RRR on floppy together with a signed printout is required to be sent by every range Addl./JCIT to the concerned CIT (CO) in respect of the returns received during a month by the 15th of the following month except for returns received during the month of July for which the same will be sent by 31st of August. A functionality has been provided in CIB software to directly upload the RRR data onto the CIB system and use it as reference data for matching purposes in the same manner as PAN data.

6.4 Matching of PAN data of computerised return receipt register of the earlier year against data of computerised return receipt register of current year - In order to identify stop filers from year to year, the PAN data of the computerised return receipt register of the earlier year can be used as source data for matching against PAN data of the computerised return receipt register of the current year as the reference data.

6.5 Matching of PAN data of deductees against data of computerised return receipt register - In order to identify stop filers/ non-filers, Section 139 A has been amended w.e.f. 1.6.2001 to make it obligatory for tax deductors to quote the PAN of deductees on TDS certificates/ and TDS returns. The Board has, directed that the provisions of Section 139A (5)(a) and 139A (5A)/ (5B) and Rule 114 B should be strictly enforced. For this, it is necessary to ensure that TDS returns and TDS certificates carry the PAN of the deductees. Section 272 B provides for imposition of penalty for noncompliance with these provisions. Once TDS returns are processed using the integrated TDS software, it will be possible to get the information of deductees on the system. It can then be used as source data and matched with the RRR data as the reference data.

7. Role of territorial ranges and their A.O.s

7.1 Local publicity of the scheme in the new urban areas- CITs and range Addl./JCITs should organise necessary local publicity of the scheme particularly in the new urban areas in their jurisdiction through local advertisements, posters, handouts, bill boards, banners, cinema slides, messages on telephone/ cellular phone bills, TV shorts etc. They should also ensure that the required number of forms are procured or printed (both Form No. 2C and Form No. 49A) as per the local need.

7.2 Meetings and camps should be organised in the towns with the help of trade associations and chambers of commerce and industry to educate the public about the scheme.

7.3 Special help camps- Range heads should organise special help camps for the One-by-Six Scheme in all the important urban areas newly brought under the scheme: They should ensure

adequate number of officers and staff for the scheme. The staff should help the local public in filling up the forms. The venue and the duration of the camp should be advertised in the local newspaper and made known to the public through notices distributed in the locality. The schedule of the camps may be drawn up depending upon the size and commercial importance and potential of the town.

7.4 Preparation and forwarding of computerised RRR - As already mentioned the preparation and timely forwarding of the computerised return receipt register to the CIT (CIB) every month is the personal responsibility of the A.O.s and the range Addl./JCIT.

7.5 Measures to ensure filing of returns by all non-filers - Once non-filers are identified and the list is sent to the Assessing Officer by the CIT (CIB), the responsibility to take further action would be that of the Assessing Officer. He should send a polite letter to each 'non-filer' enclosing Form No. 2C and Form No. 49A (PAN application form), with a request to file them if he has not done so, so far. The letter should also mention persons exempted from filing a return in Form No. 2C. In cases where neither a reply to the letter nor a return is received within a reasonable time, formal action under Section 142(1) should be initiated.

7.6 Processing of returns in Form 2C - Returns filed in Form 2C should be entered in the return receipt register like any other return. These returns should also be processed in the same manner as other returns. The assessee should also be allotted PAN.

7.7 Developing street directories - The Addl./JCITs of the territorial ranges are also responsible for developing a complete street directory of the territorial area in their ranges. These should show street wise particulars of various buildings and their occupants.

Proforma

Report on Returns in Form No. 2C

Range/ Circle/ Ward : _____

- | | |
|---|--|
| 1 | No. of returns in Form No. 2C : received from 1st April of the year □ upto the beginning of the month. |
| 2 | No. of returns in Form No. 2C : received during the month. |
| 3 | Total no. of returns in Form No. 2C : received up to the end of the month. |
| 4 | Total no. of returns in Form No. 2C : where tax has been paid. |
| 5 | Total tax paid in Form No. 2C : |

Chapter- 8

CENTRAL INFORMATION BRANCHES

1. Need for setting up specialised agency

1.1 Enormous volume of information flow to the department from various sources. The department has always felt the need for sorting, collating, managing, organising and analysing this large influx of information. The Central Information Branches (CIB) come into existence to answer this need. They are engaged in collection and collation of information from various internal and external sources and disseminate the same to Assessing Officers and the Investigation wing.

1.2 Prior to 1997, the CIB used to verify the information collected by them through query letters to assessees. However, by Board's Instruction No. 1943 dated 22.08.97 this work of verification was assigned to Assessing Officers. The CIB set up was earlier a part of the Directorate of Investigation. However, considering the importance of proper information databases of financial transactions for the department and the need to shift gradually towards non-intrusive anti- tax evasion strategies, the CIB set-up was placed under separate Commissioners of Income Tax (CIB) under the over all control of the DGIT (Investigations).

2. Organisational set-up of CIB

2.1 Prior to cadre re-structuring, the Central Information Branches were functioning under the Director of Income Tax (Inv.). As a consequence of this exercise, new posts of Commissioners of Income Tax (CIB) were created to head CIB set-up under the DGITs (Inv).

2.2 Normally, each CIB unit should have two Addl./ Joint CITs. Further, each Addl. /Jt CIT has one DCIT/ACIT, 6 ITOs and 12 Inspectors to assist him in the performance of his functions.

3. Collection of information

3.1 Information from Governmental and semi- government agencies is collected under administrative arrangements. The statutory power to collect information is exercised under Sections 131, 133 and 133A of the Act and Rule 114B/114D. In rare cases of non-compliance, or misinformation / disinformation, action can be taken u/s 133A. Non-compliance with the aforementioned provisions attracts penalty under Sections 272 A and 272AA.

4. Functions and responsibilities of CITs (CIB)

4.1 CIB is the nodal agency in the Department for collection, collation and dissemination of information from internal as well as external sources. Its main role spreads across three major areas of Department's functioning, viz.

- i. Widening of taxbase - identifying stop filers and non filers
- ii. Deepening of taxbase
- iii. Providing information for proper selection of cases for scrutiny

These roles have a direct bearing on the levels of deterrence against tax evasion. All modern tax administration set ups rely more on the use of non-intrusive methods for anti-evasion. This is possible through live, upto date and reliable information data bases of important financial parameters and transactions.

4.2 The procedure for working of CIB was revised by the Board vide CBDT Instruction 1943 dated 22/8/1997. The salient features of the scheme are as under :-

- i. Computerised systems will be used for processing CIB data at all the CIB units.
- ii. CIB units functioning under DGIT (Inv) will collect information from the source heads codified by the Board. The threshold limit for a code will be determined by the DGIT (Inv). He may increase the limits keeping in view the local conditions.
- iii. The work of CIB shall be limited to collection, collation and dissemination of information only. No query letters will be issued by the CIB units.
- iv. The sorted CIB data will be transmitted, annually, to the jurisdictional range Addl./ Joint CITs through the concerned CITs.
- v. The Assessing Officers will carry out the work of verification by issuing notices under Section 133(6) of the Act.
- vi. The Investigation Wing may utilise the stored data of a CIB unit for the purposes of developing cases for investigation and search.
- vii. There will be a reporting system under which the DGIT (Inv) will give a quarterly report of the utilisation of CIB information.

4.3 Further details of the scheme are discussed below :-

- i. The CIB unit functioning under DGIT (Inv) will gather information from the sources codified and listed by the Board on a regular basis.
- ii. The information collected will be current information. For instance, information in respect of transactions undertaken during financial year 1997-98 will be collected in the financial year 1997-98 itself. The CIB unit may organise its work of collection of information in such a manner that at one instance information from one source is collected for the preceding month or the preceding quarter depending upon the volume of information. However, the information in respect of the last months of a year may be collected in the first quarter of the following year.
- iii. The information gathered should be entered in the computerised system i.e. CIB software. The software will have fields for capturing specified details.
- iv. After information in respect of a financial year has been collected, the data for the whole year will be processed on computers to sort it address-wise and range-wise; all the addresses in a range and all the persons within an address will be arranged alphabetically. In this way all the transactions undertaken at a particular address by a person during a year will be grouped at one place and the information of all the transactions undertaken by all the persons with that address, say the members of one family, will also be available at one place for co-ordinated investigation.
- v. The data is suggested to be arranged address-wise because in most places the jurisdiction of the ranges are territorial. The concerned ranges can thus be identified on the basis of the address. But in certain cases, say company ranges, the jurisdiction of ranges may be alphabetical. In such cases, instead of arranging the information address-wise, persons can be arranged alphabetically.
- vi. A complete consolidated bound set containing the information for the range for the whole financial year grouped in the manner outlined in paragraphs 3 and 4 will be sent by the CIB unit to the range Addl./ Joint CITs through the concerned CITs between the 1st September and the 15th September of the following year.

vii. The range Addl./ Joint CIT will first identify the Assessing Officers under him having jurisdiction over the persons mentioned in the compilation and distribute the relevant data among them for verification.

viii. The system will have some obvious limitations. Information in respect of persons assessed in salary ranges, professional ranges, Central charges, Exemption Directorate and special ranges etc. where the jurisdiction is neither territorial nor alphabetical, cannot be passed on to the range heads in the above manner. In all such cases, the Addl./ Joint Commissioner possessing territorial jurisdiction has to ascertain the appropriate Assessing Officer/ Range and pass on the information to him under intimation to the CIB unit to correct their records.

ix. The procedure in the foregoing paragraphs has been suggested on the assumption that, in the absence of a perfect PAN system, it is easier to identify a Range and it would be difficult to identify the concerned Assessing Officer. In places where the jurisdiction is clearly defined so that the Assessing Officer can be quickly identified in the first instance, this procedure can be modified. The chief objective which should be kept in mind is to ensure that ultimately the information is passed on to the concerned Assessing Officer. He will be responsible for the verification of the CIB information.

x. The Assessing Officer will use the data in the following manner :-

a. If the return has been filed and the proceedings are pending he may send a notice u/s 133(6) to the assessee requiring him to confirm and furnish further details of the transactions and explain the source of investment/expenditure. If no proceedings are pending notice u/s 133(6) can be issued only with the prior approval of the Commissioner of Income-tax. If the assessee does not reply or does not reply satisfactorily, he may select the case for scrutiny in accordance with guidelines.

b. If the return has not been filed and no proceedings are pending he may, simply send a notice u/s 133(6) to the person concerned with the prior approval of the CIT requiring the latter to confirm and furnish further details of the transactions, explain the source of investment and the expenditure and also give his assessment particulars. If the proceedings are pending, prior approval of CIT is not necessary for issue of a notice u/s 133(6). On the basis of the response of the person, the Assessing Officer may decide to issue a notice u/s 142(1)(i) calling for the return and, thereafter, if necessary, decide to select the case for scrutiny.

c. In case, the assessing officer does not consider it to be a fit case for issuing notice under section 142(1)(i), the proceedings may be filed.

xi. The range Addl./ Joint CIT will maintain a record of the action taken on the information received and the results achieved.

xii. The DGIT (Inv.) will be overall responsible for reporting to the Board the ultimate use of the information. He will interact with the Commissioners and Chief Commissioners and collect the information about the results of verification of CIB information from the CITs and send a quarterly report to the Board about :-

- a. the number of pieces information distributed in the year.
- b. the number of pieces information verified till the quarter-end.
- c. the number of pieces information resulting in detection of new assesseees
- d. the number of pieces information resulting in selection of cases for scrutiny.
- e. the number of cases selected for scrutiny.

- f. the number of pieces information satisfactorily explained by the assessee.
- g. the number of pieces information remaining unverified.
- xiii The DGIT must ensure that the computerised system is used for processing CIB information.

4.4 Source codes of information : The Source Codes of information to be collected and matched by the Central Information Branch (CIB) are :-

| Code | Source | Items |
|------|--|---|
| 1 | Central Excise Department | New Registrations, excise payments including fines & penalties. |
| 2 | Customs Department | Confiscation of goods, duty paid including fines and penalties. |
| 3 | Registrar of Companies | New Registration, Certificate of commencement of business. |
| 4 | Telephone Deptt. /MTNL | Telephone Bills |
| 5 | Enforcement Directorate | Confiscation, fine & penalties, cases for FERA violation. |
| 6 | State Trading Corporation | Sale of imported cars. |
| 7 | Income-tax Department | All TDS returns filed to cross check with payees returns. |
| 8 | Sales Tax Department | New Registration, Sales tax paid including penalty |
| 9 | RTO | Registration of 4 wheeled vehicles -name, address, vehicle particulars |
| 10 | Electricity Boards. | Electricity bills above Rs. 20,000/- |
| 11 | Land Acquisition Authority | Compensation paid for acquisition of land |
| 12 | Lottery Commission/ | Payment of winnings from State Government lotteries, commission paid to agents. |
| 13 | Directorate of Industries | Registration of new industries |
| 14 | State Excise Department | New registration, excise payments including fines & penalties |
| 15 | Registrar of Properties | Transfer of immovable property |
| 16 | Housing Authority/ Housing Board. | Names, address of / allottees, details of transaction |
| 17 | Local Authorities | Public place contracts approval of building plan, new shops, bars, restaurants, cinema houses, clubs etc. |
| 18 | Banks | Cash transaction of Rs. 1 lakh and above and declaration of assets for loan and OD facilities |
| 19 | Registrar to Issue of shares and debentures. | Name and address of Investors of Rs. 20, 000 and above |
| 20 | Public sector undertakings /financial institutions credit societies, & Nidhis] | Deposits and investment, in bonds, deposits card payment-- Rs. 50, 000 credit card operators. and above. |
| 21 | Insurance Companies. | Insurance claims - Rs. 1 lakh and above. premia - -Rs. 10, 000 and above. |
| 22 | Export Promotion Council/ | Names and addresses of exporters and details of |

| | | |
|----|--|--|
| | DGFT | exports. |
| 23 | Telephone Directory / Yellow Pages/ Trade Journals | Nursing homes, clinics, gyms, interior decorators, study circles, coaching classes, guest houses |
| 24 | Turf Club | Names and addresses of race course owners, trainers, jockeys, bookies, race winners and purchase or sale of horse. |
| 25 | Hotels/Clubs/Caterers. | Expenditure incurred at these places above Rs. 10,000/- |
| 26 | Builders & contractors/ Co-operative Housing societies | Names & addresses of persons who have entered into agreement for purchase and details of transaction- Rs. 1 lakh and above. |
| 27 | Chit Fund Companies | Investment made-Rs 10,000/- and above. |
| 28 | Air Travel Agents | Package tours, travel within India, all travel abroad. |
| 29 | Transport Agencies | Names and addresses of Consignors and consignees |
| 30 | Professional/Institutes/ Bodies | Names & addresses of Doctors, Lawyers, Chartered Accountants, Cost Accountants, Architects, Engineers etc. |
| 31 | Advertising Agencies, TV, and Newspapers, | Advertisement expenditure including channels etc. those political parties - Rs. 10, 000/-- and above. |
| 32 | Stock Exchanges | Names and addresses of the investors and persons who have entered into share transactions- Rs. 20,000 and above. Holders of Stock Exchange Card, list of brokers and sub-brokers details of payment. |
| 33 | Mutual Funds | Names and address of investors --Rs. 20, 000 and above. |
| 34 | Cellular Phone Service Providers | Cellular phone subscribers. |
| 35 | Immigration Authority | Foreign Travel |
| 36 | R. B. I. | Persons seeking permission to remit foreign exchange. |
| 37 | Post Office | Deposits above Rs. 20,000, purchase of Kisan Vikas Patras - Rs. 20,000. |

The Source codes include the sources for collecting information in respect of the New Economic Criteria prescribed under the first proviso to Section 139(1).

4.5 Format of information : The format of the information to be collected with the data entry fields is as under :-

| | | |
|---|--------------------|--|
| 1 | SOURCE CODE | |
| 2 | NAME OF THE PERSON | |
| 3 | PAN/ GIR NO. | |
| 4 | ADDRESS | |

| | | |
|---|--|--|
| | i. HOUSE/ BUILDING/ PREMISES NO. / STREET/ ROAD | |
| | ii. LOCALITY | |
| | iii. CITY/ TOWN/ VILLAGE | |
| | iv. POST OFFICE | |
| | v. DISTRICT | |
| | vi. STATE | |
| | vii. PIN CODE | |
| 5 | RANGE ADDL./ JCIT | |
| 6 | DATE OF TRANSACTION | |
| 7 | AMOUNT INVOLVED | |
| 8 | TRANSACTION DETAILS (including the name of the source from whom data has been collected) | |

4.6 For the success of this scheme, both the investigation and the assessment wings will have to coordinate their efforts and supplement each other.

5. Transactions where quoting of PAN is mandatory

5.1 U/s 139A (5) (a)/ (b) persons who have been allotted PANs are required to quote the same in their returns of income, challans for payment of taxes and all correspondence with the Income-tax Department.

5.2 U/s 139A (5)(c) the Central Board of Direct Taxes has powers to notify transactions where quoting of PAN would be compulsory. The Board has issued a Notification under Section 139A (5)(c) making it mandatory for every person to quote his PAN in all documents pertaining to the following transactions :-

- i. sale or purchase of any immovable property valued at five lakh rupees or more;
- ii. sale or purchase of a motor vehicle, which requires registration by a registering authority;
- iii. a time deposit, exceeding fifty thousand rupees, with a banking company ;
- iv. a deposit, exceeding fifty thousand rupees, in any account with post office saving bank;
- v. a contract of a value exceeding ten lakh rupees for sale or purchase of securities;
- vi. opening an account with a banking company ;
- vii. making an application for installation of a cellular telephone connection;
- viii. payment to hotels and restaurants of amount exceeding twenty five thousand rupees
- ix. payment in cash for purchase of bank drafts or pay orders or banker's cheques from a banking company for an amount aggregating fifty thousand rupees or more in one day.
- x. deposit in cash aggregating fifty thousand rupees or more, with a banking company in one day;
- xi. payment in cash in connection with travel to any foreign country of an amount exceeding twenty five thousand rupees at any one time.

5.3 Rule 114B allows persons who have applied for allotment of a PAN but have not been allotted the same to quote their General Index Register Number till such time as a PAN is allotted to them. Further under the third proviso to Rule 114B any person, who has not been allotted a PAN or who does not have a General Index Register Number and who makes a payment in cash or otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft or through credit card in respect of any specified transaction, can make a declaration in Form 60 giving particulars of such transaction.

5.4 Information returns under Rule 114D : An amendment has been made in Rule 114D whereby information relating to transactions specified u/r 114B, where quoting of PAN is compulsory, entered in cash is to be submitted by the concerned person to the CIT (CIB) every six months.

6. Collation of information

6.1 Importance of PAN : The Permanent Account Number (PAN) is conceived as a taxpayer identification system in which each allottee is identified by a nationally unique alphanumeric number based on following constant permanent parameters :-

- i. Full name of the taxpayer;
- ii. Date of birth / Date of Incorporation;
- iii. Status;
- iv. Gender in case of individuals; and
- v. Father's name in case of individuals (including in the cases of married ladies)

Since a taxpayer can make payment of taxes or have monetary transaction anywhere in India, a unique all India taxpayer identification number is essential for linking and processing transactions / documents relating to a taxpayer on computers, as also for data matching. Therefore PAN has an obvious importance in matching of information relating to financial transactions of the taxpayers collected through various sources - whether internal or external. It becomes a powerful non-intrusive anti-tax evasion tool for widening and deepening of the tax base.

6.2 Problems in matching against name, and/ or against name and address : On the other hand, matching large volumes of data against names or names and addresses poses serious operational problems. This is because of different naming conventions, practices and customs followed in our country. For this, data relating to names has to be cleaned and standardised. This means that all abbreviations have to be removed, and expanded parts of the name i.e. surname, first name, and middle name have to be placed in the specified fields. This exercise has to be carried out both for the Reference data (i.e. the data against which matching is to be carried out e.g. PAN data or RRR data), and the source data (i.e. the data which is to be matched e.g. the data relating to purchase of new cars).

6.3 Standardisation of address data : A similar exercise becomes necessary for the purpose of cleaning and standardising the address data relating to locality and street. Cleaning means that different parts of addresses i.e. house no., street, locality, city, state, PIN code etc. come in the specified field for the entire address database. Standardisation means that the same streets and localities known by a variety of different, even marginally varied, names are identified for the

system as pertaining to one and same locality, street etc. Without proper cleaning and standardisation of names and addresses, computerised data matching on name or name and address may not give reliable results. On the other hand data matching with PAN as the identifying factor does not require this exercise. It is, therefore, far faster and more reliable.

6.4 Party building and multiple collations : It is possible that the name of the same person may be appearing in the information received from the same source or from different sources. Party building means that the transactions pertaining to the same person in same or different data bases should be organised at the same place. The CIB software has this functionality. Where matching is being done on names or on names and addresses, manual intervention may be needed for party building in instances of 'near matches' as distinct from 'perfect matches'. The CIB software also has the functionality of multiple collations with respect to sources and to time period i.e. it allows matching of part data from the same source or different sources at different times during the year.

7. Features and functionalities of CIB software

7.1 The CIB software is a subsystem of Enforcement Information System (EFS). It is designed to act as an information monitoring system for third party information in which the data relating to transactions from various sources is entered, parties are formed on the basis of PAN or name and address and cases are generated for parties for whom one or more transactions meet the threshold criteria. It is an on-line, menu-driven and Windows based system having graphical user interface (GUI). working under a well defined security domain which allows only the authorised officers to view and/ or update the relevant information. It has screens for performing different functions like data entry, executing queries, generating reports, etc.. Besides, it provides reports for tracking the progress of cases. The system can handle information collected from :-

- i. **CIB Sources**
- ii. **Data relating to the One by Six or the New economic criteria**
- iii. **Internal Sources (i.e. purchase, sales, commission etc.. above certain limits)**
- iv. **Information from TDS Returns (from TDS system)**
- v. **Transactions where quoting of PAN is mandatory.**

It can collate all financial transactions under specified heads, with amounts above threshold limits or without any amount, carried out in a financial year by a party.

7.2 The CIB software provides functionalities for :-

- i. Data entry of transactions received from various agencies.
- ii. Import of information received from various agencies on magnetic media after conversion into a standard format
- iii. Interface with the TDS system for importing information from TDS returns.
- iv. Collation of transactions based on standardisation of name and address.
- v. Creation of parties after collation and maintenance of links between parties and their transactions across years.

- vi. Interface with AIS system for identifying parties holding PAN and matching with PAN data base.
- vii. Maintenance of benchmark parameters for selecting parties for dispatch of query letters.
- viii. Generation of query letters and summons u/s 131.
- ix. Timely and accurate collation of information, reports and on-line queries.

7.3 Receipt and data entry of transactions : The transaction data under different transaction codes (sources) are received either on paper requiring data entry or are on magnetic media. A designated officer in the office of the CIT (CIB) functioning as receipt incharge enters control information in the form of 'transaction receipt' at the time of receipt of data on paper or magnetic media, for preventing any tampering of data. This includes agency code, transaction code, date of receipt, number of transactions, media type etc.. Only the 'receipt incharge' has the privilege to alter this data. Data entry or uploading of the data on magnetic media can not be done unless this control record is created. Data is captured in a standard format covering details like name, address, father's name, date of transaction, amount, reference no., nature, mode of payment etc.. The CIB system provides an on line data entry screen to record transactions as per the standard format. Data entry of transactions is made by the staff in the office of CIT (CIB) as per the transaction codes allotted to them. For transactions received on magnetic media, data is down loaded on a separate machine and for virus check and validations. Only the validated and converted data are uploaded to the CIB system. Threshold limits are not applied during data entry of transactions and thus transactions of any amount can be entered into the system. Suitable check lists are generated to cross verify the correctness of the data entered and the count of the transaction entries.

Once the checklists are verified, the 'receipt incharge' marks the lot identified by agency code, transaction code and date of receipt as 'complete'. After this stage any changes to transaction data are under strict audit control.

7.4 Standardisation of names and addresses : Considering the nonstandard pattern and variations in name and address, especially in the Indian context, any meaningful collation based on name and address requires complex standardisation algorithms. The CIB system incorporates a practical and easy to implement approach towards

standardisation. A very loose collation would lead to unwanted transactions being linked together whereas any rigid collation would result in splitting of transactions due to minor variations. All transactions, standardised and un-standardised are reviewed on-line by the ITO's staff for correctness. Names and addresses are corrected for data entry errors leading to re-standardisation.

7.5 Formation of parties and their transactions

7.5.1 After the above review, a batch process is executed that collates the transactions on the basis of the standard name and address and tries to locate an existing party with the same standard name and address. If a unique party is located the transactions are linked to it.

7.5.2 If more than one party is located, then such transactions groups are printed on a report which needs manual linking with parties. If no party is located, a new party is created from the transaction data and transactions are linked to it.

7.5.3 Parties and their transactions are reviewed on-line by the ITO and his staff. The system provides queries and options to the user to augment the list of transactions for a party by judiciously linking other transactions on the following basis :-

- i. **Standard Address**
- ii. **Full Name**
- iii. **Full name and father's name (where specified)**
- iv. **PAN (where specified)**
- v. **Bank and Cheque number range (where available)**

Transactions not belonging to the party but linked due to collation criteria should be delinked and linked to either an existing party or to a new party created at this stage. Any unlinked transactions printed on the report are linked to appropriate parties at this juncture. Review of parties and their transactions is done by ITO and their staff using alphabetic allocation of parties.

7.6 Matching with PAN : The party data generated on CIB can be matched with the PAN data in the Assessee Information System (AIS)

database. If PAN is available in the source data party building is not necessary and the source data can be matched directly with the PAN data. Otherwise the Party wise data generated on CIB should be matched with the PAN data on the basis of name and address. As matching on the basis of standard name and address is effective and efficient, it requires standardisation of names and addressees in the AIS database which is done by the CIB Software. The party lists are then matched with the AIS data, thereby populating PAN to the parties, where it exists.

7.7 Dissemination of information : Where PAN exists the information goes directly on the system to the AO having jurisdiction over the PAN holder. Where parties do not have PAN the information is organised on the basis of address and forwarded to the range Addl. CIT/JCIT according to his territorial jurisdiction. He is required to confirm the exact jurisdiction and send it to the concerned AOs. The AOs will be able to view these pieces of information through the Assessment System. The system provides for issue of query letters, notices u/s 133(6) & 142(1), summon u/s 131 and Form 49A.

7.8 Follow up by Assessing Officers : The AO after acting upon the case will update the case at the assessment stage and record concealment determined at various assessment and appellate levels e.g. first appeal, ITAT etc.. In the end, the AO will close the case by entering a closure code. This code will also cover cases where the AO was satisfied with the explanations of the party and no assessment related action was required. In case, a new assessee is created as a result of the case, the process of PAN allocation will mark the PAN allotted to the party concerned. The case will then be transferred to the Assessing Officer having jurisdiction over the assessee. Information regarding final action taken by the AO can be seen by his superior officers, such as one Joint/ Additional CIT and CIT, as well as the Investigation Wing.

7.9 Queries : The CIB system can be used for flexible queries on transaction, party and case data. Users can enquire on any number and combination of attributes for one of the three entities and view the related records of the other two entities. For example users can select

a party and view the party's cases for different years and the financial transactions covered under each case.

7.10 Outputs - The major outputs from the system are :-

- i. Check list of transactions entered;**
- ii. List of transactions which could not be linked to any of the parties;**
- iii. Parties and their transactions;**
- iv. Standard CIB codified comment wise number of cases and total concealment; Query Letter and Summons;**
- v. Summary providing - Total number of Query Letters/ Summons issued and responded;**
- vi. AO wise summary of CIB cases based on selection parameters;**
- vii. AO wise summary of CIB cases with outcomes of assessment.**

7.11 Security : The CIB System Administrator in the office of CIT (CIB) is responsible for running all the batch processes and setting up the benchmark parameters on receipt of instructions from the Board and maintaining other base data. The Receipt Incharge is responsible for entering and verifying the 'transaction receipt'. The staff of the CIT (CIB) is responsible for entering the transaction data. The review processes are carried out by the ITOs (CIB) and their staff. An A.O. and his superiors are able to view the cases within their jurisdiction; the A.O. alone, however, will be able to modify the details. However, his superior is empowered to reassign the case to another A.O. under him/her. An AO has access to only those cases that are referred to him. An audit log for updates to transaction, party and case data is maintained after the 'transaction receipt' is marked as 'complete'.

7.12 Interfaces with other systems :-

- i. AIS - AIS is used to get the PAN for the name and address on the transactions. The system will read the Form 49A data in the AIS database and standardize the names and addresses of the PAN holders in the CIB software. The standardized name and address of the party are matched with this standardized name and address to assign a PAN to the party.**

- ii. **TDS** - TDS entries created through TDS returns are read to populate the transactions in the CIB system according to the threshold limits set.
- iii. **AST** - AST issue notices u/s 142(1) to parties involved in cases which are marked as potential assessees. This precedes the allocation of PAN by AIS.

8. All India data bank of important / high value financial transactions.

8.1 An All India data bank is being set up for collating information relating to transactions where quoting of PAN is mandatory, as also those transactions where tax is liable to be deducted at source. The objective is to make available clean and collated party wise data of such transactions after linking with PAN data, to the respective Assessing Officers on the system. The main benefit will be that information relating to these transactions coming from various sources and at different locations is collated party wise across the country and made available to respective A.O's. in an easily accessible format for verification and for use at the time of selection of cases for scrutiny. Since the TDS returns will get digitised in the process, these can then be processed on system by TDS A.O.s using the integrated TDS software.

8.2 Basic components of the scheme :

- i. **CITs (CIB) will be the custodians of the Data Bank. Data Centres with requisite computer infrastructure would be set up under them for the purpose.**
- ii. **Collection of information relating to the transactions specified under Rule 114B of I.T. Rules, and TDS returns.**
- iii. **Digitisation of this information by outsourcing data entry, and data cleaning work.**
- iv. **Processing of the digitised information by CITs (CIB) including authentication, sorting, collation, matching and comparison with PAN databases.**
- v. **Provide dissemination of the collated information covering all parties to the transactions giving their PAN, to the respective A.Os. for verification.**
- vi. **Processing of digitised data of TDS returns by TDS A.O.s on the TDS software**
- vii. **A proper mechanism for monitoring and supervision etc.**

8.3 Procedural framework : The CITs(CIB) will be the custodians of the data bank, with responsibilities for :-

- i. Collection of source information in respect of the prescribed categories of transactions as well as TDS returns;
- ii. Digitisation of this information in standard data structure format;
- iii. Ensuring correctness of digitised data;
- iv. Returning the TDS returns with its digitised data back to the concerned CITs (TDS) and A.O.s (TDS)
- v. Collation of data and party building - including collation across RCCs
- vi. Matching with PAN data base and linking parties to PAN
- vii. Generating party-wise list of transactions with PAN and those without PAN
- viii. Dissemination of the information on system to A.O.s online and offline.

8.4 The CITs (TDS) will also be responsible for :-

- i. Ensuring that the returns filed before the TDS A.O.s are forwarded to the concerned CITs(CIB) for digitisation of the data.
- ii. Collecting the returns and soft copy of data after digitisation from the CITs (CIB) and passing these to TDS A.O.s for processing on TDS Software.
- iii. For the TDS A.O.s not on the network, the jurisdiction will have to be redesigned in such a manner that their returns can also be processed at stations which are on the net work.

8.5 Digitisation and standardisation of source data : The scheme require large volumes of data received on paper documents to be entered on the system within a reasonable time - say 3-6 months of receipt of same by outsourcing this work. In view of the concerns relating to privacy / security of data the data entry will be done locally in the offices of CITs (CIB). For this, a data centre with 20 PCs and a Local Building Server, working in shifts will be set up for each CIT(CIB). The work order for outsourcing data entry should make accuracy and timely delivery the essence of the contract.

8.6 Processing of data : The CITs(CIB) will develop the address dictionary of the cities under their jurisdiction. Once the digitised source data is received, they will get the same collated party-wise with PAN as the main identifying parameter. The CIB software has the facility of multiple collation and matching with PAN. Therefore, it would be possible to match party-wise information with PAN data base and to generate A.O. wise list of parties with PAN numbers which can then be made available to the A.O.s on the network across the system. The data without PAN or with invalid PAN will be segregated and matched on name, and name with address, as matching parameters.

8.7 Dissemination of collated information : The main output of the system would be the data of party-wise transactions indicating PAN numbers and particulars of the A.O.s. This will be stored on system. Controlled access would be allowed to this data to the respective A.O.s / Commissioners / Ds.I.T. (Inv.). A decision will be taken regarding archival of this data 3 to 5 years after the year of transaction.

8.8 Processing of TDS returns : A major spin off of the Scheme would be the availability of TDS returns in digital format, which can then be easily processed on the existing TDS Software by TDS A.O.s who are on the network. As regards TDS A.O.s who are not yet on the network, facilities of processing of TDS returns will be provided at the respective Computer Centres / or Data Centres of CIB till such time that such stations also come on the network.

Chapter- 9

PRE-ASSESSMENT COLLECTION PROCEDURE

1.1 Taxes collected prior to assessment may be classified as follows : -

- a. Tax Deducted at Source - TDS
- b. Tax Collected at Source - TCS
- c. Advance tax
- d. Self-Assessment tax

1.2 Pre-assessment tax collection accounts a very large proportion of the direct taxes collected in a financial year.

1.3 This chapter discusses the procedure relating to the same.

A : TAX DEDUCTED AT SOURCE (TDS)

2.1 Tax deduction at source implies collection of tax at the very source or at the time of payment. According to the provisions of the Income-tax Act, while paying or crediting certain type of income to certain persons, the payer has to deduct tax at source at specified rates and remit the same to the Central Government by the dates prescribed. The sum so deducted is adjusted towards the assessee's ultimate tax.

2.2 Tax has to be deducted at source in relation to the following payments :

- i. Salaries (Sec 192)
- ii. Interest on Securities (Sec. 193)
- iii. Dividends (Sec. 194)
- iv. Interest other than interest on securities (Sec. 194-A)
- v. Winnings from lottery or crossword puzzle (Sec. 194-B)
- vi. Winnings from horse race (194-BB)
- vii. Payments made to contractors and sub-contractors (Sec 194-C)
- viii. Insurance commission (194-D)
- ix. Payments made to non-resident sportsmen and sports associations (Sec. 194-E)
- x. Payments in respect of deposits under national savings scheme (Sec. 194-EE)
- xi. Payments on account of repurchase of units by mutual funds or UTI (194-F)
- xii. Commission etc., on the sale of lottery tickets (Sec. 194-G)
- xiii. Commission or brokerage (Sec. 194-H)
- xiv. Rent (Sec. 194-I)
- xv. Fees for professional or technical services (Sec. 194-J)
- xvi. Income in respect of units (Sec. 194-K)
- xvii. Other sums (Sec. 195)

2.3 A detailed chart indicating the scope of deduction, due dates for filing the required return, the forms to be used, the rate of deduction, the time limits for remittance, etc., is given in Annexure-I at the end of the Chapter for the financial year 2002-2003. Other important points to

be taken note of by the Assessing Officer relating to specific types of deduction are mentioned below :

3. Deduction from salaries

3.1 For tax deduction from salaries, the tax deductor / employer has to file an annual return in form 24 on or before 31st May of the succeeding financial year. This return should be entered in the TDS Return Receipt Register (Annexure-II) datewise in chronological order. The return filed should be scrutinised with a view to check whether correct tax has been deducted proportionately on monthly basis and deposited into Government account within the prescribed time limit.

3.2 The AO should also check whether the various deductions / exemptions have been claimed correctly and also the perquisites calculated in accordance with the Income-tax Rules. If the A.O./TDS notices short deduction /a wrong claim, he should take up the matter with the tax deductor / employer and pass an order u/s 201(1) and 201(1A).

3.3 Procedure regarding the payment of TDS to government account on salaries :

According to Rule 30 of the Income-tax Rules, normally in the case of deduction by or on behalf of the Government, TDS deducted should be paid to the credit of the Central Government on the same day. In other cases, within 7 days from the date of deduction.

3.4 The proviso to Rule 30(1) (b) (ii) (b) provides that the AO may with the prior approval of the Addl./JCIT, permit an employer to pay income tax deducted from any income chargeable under the head "Salaries" on 15th June, 15th Sept., 15th Dec., and 15th March of the financial year.

3.5 Supervisory action to be taken by (range) officers : During inspections supervisory officers should check the return to see whether all perquisites are correctly evaluated; whether all deductions claimed under chapter VIA are supported by evidence and whether the claim for rebate u/s. 88 is supported by proper evidence (i.e. Form 12-BA) and whether the deduction of tax is in order.

4. Form for no deduction : If the payee other than company or firm files a declaration in writing duly verified in form 15H that the estimated total income for the assessment year following the year of credit or payment will be less than the minimum liable to Income-tax, no tax should be deducted at source. This statement should be furnished before deduction of tax is made from interest by the person responsible for deducting the tax. It shall remain in force for a year. Tax is also not to be deducted in relation to cases specified in Sec. 194A(3).

5. Winnings from lottery or crossword puzzle : Where the winning from a lottery, crossword puzzle, card game or any other game, exceeds Rs.5000/-, the person responsible for payment shall effect TDS at the prescribed rates. Where the winnings are wholly in kind or partly in cash and partly in kind but the part in cash is insufficient to meet the entire liability of tax deduction, the tax deductor/payer shall ensure that tax has been paid in respect of such winnings before parting with the prize, either in cash or kind.

6. Payments to contractors and sub-contractors : The AO in charge of TDS is required to update the list of disbursing officers in the private sector public sector and Government departments on the basis of the returns received in the proceeding year. Letters may be addressed to non-filers, requesting these persons to file annual returns u/s. 194C after the specified due date is over.

7. Insurance commission

7.1 At the time of deducting tax from the insurance commission credited to an agent's account, adjustment for any debits made in his account in respect of excess commission credited or paid to him earlier is not permissible and income-tax must be deducted from the full amount of commission credited to his account.

7.2 The AO should keep a watch for the submission of the annual return in form 26D. This deals with deduction of tax from insurance commission u/s 194D. The A.O. should verify the payment with reference to the daily collection report received by him from the RCC. He should process the annual return and check whether the amount of tax thereon has been correctly worked out. He should prepare a list of all insurance companies assessed in his charge and update the same periodically with a view to verifying whether the said statements/ certificates have been received from all persons who are liable to deduct tax at source.

8. Payments in respect of deposits under National Savings Scheme etc. : The person responsible for paying to any person as per provisions of Sec 80CCA (2) (a) shall at the time of payment deduct as per section 194EE income tax @ twenty percent where the amount of such payment in the aggregate during the financial year exceeds rupees two thousand and five hundred. No deduction shall be made when such payments are made to the heirs of the assessee.

9. Payment of rent

9.1 When rent is paid in advance, tax is to be deducted while making the advance payment. The credit for such tax deducted at source is to be given in the year in which such advance is offered for taxation. This is as per CBDT's circular No. 5 dated 02.03.2001.

9.2 In Circular No. 715 dated 08.08.1995 the Board have clarified that if there are a number of payees, each having a definite and ascertainable share in the property, the limit of Rs.1,20,000 will apply to each payee / co-owner separately. The payers and payees, however, have been advised not to enter into sham agreements to avoid TDS provisions.

10. Other sums

10.1 Income tax is required to be deducted from payments (including income by way of insurance commission) made to non-corporate or non-resident taxpayers as also to companies which are neither Indian companies nor companies which have made arrangements for declaration and payment of dividends within India u/r 27 of the Income tax Rules.

10.2 U/s 195 any person responsible for paying any interest not being interest on securities and dividends or any other sum, to a non resident shall at the time of payment deduct income tax thereon at the rates in force.

10.3 The person responsible for deduction shall file a statement within 14 days of the end of the quarter / 14days after the expiry of two months from the month in which income is credited, in form 27.

11. Consequences of failure to deduct or pay TDS

11.1 U/s. 201, the persons responsible to deduct tax at source who do not deduct such tax either in full or in part or after deducting fail to pay the same to the Central Government as required under the provisions of this Act, shall be deemed as assesseees in default u/s 201(1). The amount due can be collected from them. Besides this, penalty u/s 221 could also be imposed for such a lapse. Before levying of the same, the deductor is to be given an opportunity to explain the reasons for the default.

11.2 U/s 201 (1A), interest under section 201(1A) shall be charged at the prescribed rate if the person responsible to deduct tax does not deduct such tax either in full or in part or after deducting fails to pay the tax to the Central Government. Interest is calculated on the amount of such of tax from the date on which tax was deductible to the date on which it is actually paid.

12. Penalty for failure to deduct tax at source :

12.1 Section 271C :If any person fails to deduct the whole or any part of tax under the provisions of Chapter XVII B
or
pay the whole or any part tax as required by or under the provisions of Sec 194 B.

Then, such person shall be liable to pay penalty equal to the amount of tax which such person failed to deduct or pay as said above.

12.2 The penalty shall be levied by the Additional Commissioner of Income-tax / Joint Commissioner of Income-tax.

13. Levy of penalty for late filing of annual returns.

13.1 Failure / delay in filing the prescribed annual return of TDS without reasonable cause would attract penalty u/s 272A(2)(c). The quantum of penalty leviable is Rs.100 for everyday of default but limited to the amount of tax deductible or collectible.

13.2 In practice, the AO would have to refer the cases of defaulters to the Addl. CIT / JCIT for considering initiation of penalty proceedings. The Addl. CIT / JCIT has to give sufficient opportunity to the assessee and consider the reasons put forth before levying a penalty. A penalty register has to be maintained by each Assessing Officer as prescribed by the Board vide

Instruction No. 1856 (Annexure-III). In the office of the range Additional/Joint CIT, a penalty register should be maintained and cases disposed off keeping a watch over the time-limits.

13.3 Section 276B - The provisions relating to prosecution for defaults under TDS is discussed in the chapter on prosecution.

14. General procedure for issue of certificate for non deduction of tax or for deduction at a lower rate

14.1 There are provisions in law enabling the Assessing Officer to issue a certificate for non-deduction of tax or for deduction at a lower rate on a request made by the assessee. The procedure for issuing such certificates for deduction under different heads are as under :

15. From contract payments (Sec. 194 C) : If he is satisfied that the total income of the contractor / subcontractor justifies the deduction of tax at a lower rate or no deduction, the AO with jurisdiction over the contractor/sub-contractor, shall, on an application made by such person (form 15D), issue him an appropriate certificate in terms of section 194C(4).

16. From insurance commission (Sec. 194 D)

16.1 The recipient of the commission has to make an application to the Assessing Officer in form 13 and obtain from him a certificate authorising the person responsible for paying the insurance commission to deduct tax at such lower rates or deduct no tax, as may be appropriate in his case (form No. 15AA)

16.2 One of the reasons for introduction of provisions for deduction of tax at source from insurance commission was to tackle the problem of benami and fictitious agents. While considering applications u/s 197 for issue of certificate for deduction of tax at source at lower rate or no deduction, as the case may be, from insurance commission, the Assessing Officer, shall keep in mind and examine whether the applicant is a real agent or is a benami or fictitious agent. The certificate should not be issued where there is reason to believe that the applicant is not a real agent. In such cases a speaking order is to be passed by the AO and the reasons for the rejection clearly brought out in the order.

16.3 Such certificate will be valid for the period specified therein, unless it is cancelled by the Assessing Officer earlier.

17. Commission etc. on sale of lottery tickets

If the person who has been stocking, distributing, purchasing or selling lottery tickets, justifies the deduction of tax at a lower rate or no deduction of income tax, he shall apply to his Assessing Officer in form no. 13 D (Rule 28(4)) and obtain such certificate from him.

18. From rent (Sec. 194 I) : The person in receipt of rent may apply to the AO in the prescribed form (Form No.13) and obtain a certificate from the AO in the prescribed form (Form No.15AA), on satisfying the Assessing Officer that in his case no deduction of tax or deduction of tax at a lower rate is justified. Such certificate is normally issued for a period of one year.

19. Action on scrutiny of annual returns : On scrutiny of the annual returns, if the AO finds that tax has either not been deducted or deducted only partly, he has to pass a speaking order intimating the shortfall and issue a demand notice requesting the assessee to make the required payment u/s 201(1). The AO shall charge interest u/s 201(1A) at 15% per annum from the date on which tax was deductible to the date on which tax was actually paid to the Government account. A demand and collection register has to be maintained by each AO in the prescribed Form (Annexure-IV). Collection of demand raised should be watched. Register of daily collection of income tax - TDS has to be maintained by each AO for the purpose of watching the collection (Annexure-V).

20. Action for AOs - Inspection : In order to find out names of persons who have defaulted in filing their annual returns or otherwise, failed to deduct tax at source, periodical inspections may also be carried out by AOs with the approval of appropriate higher authorities. A report on the outcome of the inspection should be sent to the concerned Commissioner of Income-tax through proper channel within 7 days of the inspection.

21. Time and mode of payment of the tax deducted at source to government.

21.1 Rule 30 specifies the due dates for remitting the tax deducted at source as mentioned below :

- i. In the case of deduction by or on behalf of the Government on the same day.
- ii. In respect of sums on which tax has been deducted in accordance with the provisions of sections 193, 194A, 194C, 194D, 194G, 194H, 194I, 194J, 195, 196A(2), 196B, 196C, 196D :-
 - b. in cases where income referred to above is credited by a person to the account of the payee as on the date upto which the accounts of such person are made:- within two months of the expiry of the month in which that date falls.
 - c. in any other case:- within one week from the last day of the month in which the deduction is made.
- i. in respect of sums deducted in accordance with other provisions:- within one week from the date of such deduction.

21.2 Use of proper challans : There are different challans prescribed for remitting of TDS relating to corporate tax payer and others. It should be brought to the notice of tax deductors that they use proper and correct challans.

21.3 Credit for tax deducted at source : Sec. 199 of Income-tax Act specifies that credit for TDS made and paid to the Central Government account shall be treated as a payment of tax on behalf of the person from whose income tax deduction was made and accordingly, credit shall be given to him on filing of TDS certificate, at the time of the assessment for the assessment year in which such income is assessable.

22. Verification of TDS certificate with the return received by AO TDS

22.1 Vide Instruction No. 1797 dated 19.09.1998 and Instruction No. 1856 dated 14.09.1990, the Board had issued instructions that a small percentage of the T.D.S. certificates presented to the Assessing Officer concerned should be verified by him with reference to the records of the

I.T.O. (T.D.S.) concerned before giving credit for such tax deducted at source. The percentage of certificates to be subjected to such cross-verification was left to the discretion of the respective Chief Commissioners. In partial modification of the aforesaid two instructions, the Board vide Instruction No. 11 dated 10.10.2002 has, however, directed that no fixed percentage may be prescribed by the Chief Commissioners for cross-verification of the T.D.S. certificates. The Assessing Officer may verify T.D.S. certificates wherever the quantum of the tax deducted or the credibility of the deductor or deductee assessee or the circumstances of the case warrant such cross-verification.

23. Tax deduction account number

23.1 All persons deducting tax at source have to be allotted a tax deduction account number (TAN). For this purpose the tax deductor has to apply to the AO, within one month from the end of the month in which tax is first deducted, in form 49B.

23.2 Once TAN is allotted to a person, he should quote the same in all future correspondences with the AO and in all challans for the payment of any sum towards tax deducted at source. For this purpose the AO should maintain a register for allotment of tax deduction account number (TAN) (Annexure-VI).

23.3 For allotment of TAN a software has been introduced by the Director of Income-tax (Systems). The same is connected to the national network at the Regional Computer Centres and other places to the local network. The Assessing Officers in Regional Centres and local centres can now allot TAN numbers online from the networked computers.

24. Jurisdiction of Assessing Officers

24.1 Vide its notification S.O. 732(E) dated 31.07.2001, the Board has conferred full powers to Commissioners in Delhi, Calcutta, Mumbai and Chennai to perform functions relating to deduction of tax at source & collection of tax at source under Chapter XVII B & Chapter XVII BB respectively. The Commissioners at various places in turn have notified certain AOs to function as AO TDS. In all other places the respective charge level Commissioners of Income-tax have been empowered to notify one or more AOs to perform and function as AO TDS with specified territorial jurisdictions.

25. Computerisation of tax deduction at source

TDS application Overview

25.1 TDS is an on-line menu driven windows based software developed to perform operations related to the tax deduction system of the Income-tax department. The screens are designed in such a way that the users find the application easy to use, friendly and self-explanatory. The application supports and delivers meaningful messages that make the task of the user easy.

25.2 In the existing tax deduction system (TDS) of the Income-tax department, there are two broad functional areas. First and foremost is the maintenance of the tax deduction account number (TAN) information. TAN is a unique number used by the Income-tax department to

identify persons, companies, organizations responsible for deduction of tax at source. The other functional area involves monitoring of tax deductions/collections at source.

25.2.1 Various functions of TDS applications : TDS is mainly a parameter driven system. It provides the following major functions :-

- i. On line allotment of TAN and maintenance of tax deductor's database.
- ii. One time reformatting of existing TANs and building of tax deductor's database.
- iii. Entry of return receipt register in the system.
- iv. Verification of returns for automatic detection of defaults related to demands/penalties and generations of SCNs.
- v. Data entry of returns and application of on-line validations for ensuring high degree of data accuracy.
- vi. Maintenance of manually detected defaults and generation of SCNs.
- vii. Support for magnetic media based returns.
- viii. Verification of TDS returns/statements for automatic detection of defaults related to demands and penalties and generation of show cause notices.
- ix. Generation of justification lists to substantiate the show cause by giving entry level details.
- x. Provision for manual detection of defaults and generation of show cause notices for the defaults.
- xi. Functions to maintain key information about demand and penalty as a result of subsequent proceedings viz. Rectification, revision, appeal etc.
- xii. Calculations of tax and interest, deductions and due dates etc. under various sections.
- xiii. Posting of demands, refunds, interest to TDS IRLA at various stages.
- xiv. Incorporation and monitoring of adjustments made for short deduction of tax.
- xv. Maintenance of prosecution proceeding
- xvi. Supports flexible on-line queries to meet the user requirements timely and accurate report generation and on-line queries.

B : TAX COLLECTION AT SOURCE (TCS)

26.1 Section 206C of the Income-tax Act introduced w.e.f 01.06.1988 provides for collection of tax at source, at a specified percentage of the sale consideration, by the sellers of liquor and forest produce, like timber / tendu leaves, etc. The provisions were essentially introduced because the persons who purchase these types of articles and earn income fall in the unorganized sector and it is ordinarily difficult to assess their incomes and bring them into the income-tax net.

Persons responsible for collection

27.1 The sellers responsible for collection of tax u/s 206C are :-

- i. Central Government
- ii. State Governments
- iii. Local Authorities
- iv. Corporations or authorities established by or under any statute,

- v. Companies
- vi. Firms, or
- vii. Co-operative Societies

27.2 The term, 'buyer' is defined in clause (a) of explanation to Section 206C. It means a person who obtains in any sale, by way of auction, tender or any other mode, goods, like alcoholic liquor, tendu leaves, timber (purchased under a forest lease or otherwise) or any other forest produce. It also includes the right to receive any of these commodities by any of the aforesaid means. It does not however include : -

- i. a public sector company
- ii. a buyer in the further sale of such goods obtained in pursuance of such sale, or
- iii. a buyer where the goods are not obtained by him by way of auction and where the sale price of such goods to be sold by the buyer is fixed by or under any State Act.

When TCS is made

28.1 Under section 206C(1) tax is to be collected:-

- a. at the time of debiting of the amount payable by the buyer, or
- b. at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier.

28.2 Hence, if the account of the buyer is debited with the amount payable, tax must be collected from the buyer at that time, but if there is no debit, then tax is to be collected at the time of receipt by cheque, draft, etc. Since, in either case the debit would be quicker, tax would ordinarily be collected at source at that moment.

28.3 Section 206C lays down that any amount so collected and paid under section 206C would be deemed as payment of tax on behalf of the person from whom the amount has been collected and credit shall be given to him for the amount so collected on the production of the certificate issued under sub-section (5) of Section 206C.

The rates at which TCS has to be made are prescribed in the Finance Act.

29. Certificate for no collection of tax at source / collection at lower rate

29.1 Under rule 37C(1), the Assessing Officer, on an application made by the buyer, may issue a certificate in form 27C to the effect that to the best of his belief any of the goods referred to in the aforesaid table are to be utilised for the purposes of manufacturing, processing or producing articles or things and not for trading purposes and as such no tax would be collected and the provisions of sub section (1) of 206C shall not apply. The certificate given under Rule 37C(1) shall be valid for such period (not exceeding one year from the date of the certificate) as the Assessing Officer may specify therein, unless it is cancelled by him at any time before the expiry of the such period. An application for a fresh certificate may be made, if required, after the expiry of the period of validity of the earlier certificate. The certificate is valid only for the person named therein.

29.2 If the Assessing Officer is satisfied that the total income of the buyer justifies the collection of tax at a rate lower than that specified in the section, the Assessing Officer shall on

an application in form 27F (under Rule 37G), give to him a certificate in form 27G (Rule 37H) for collection of tax at such lower rate. Such certificate shall be valid for the assessment year specified in that certificate, unless it is cancelled by the Assessing Officer at any time during the specified period.

29.3 An application for a fresh certificate may be made, if required, after the expiry of the period of validity of the earlier certificate. The certificate will be valid only for the person named therein.

30. Certificate to be issued by the deductor u/s 206C(5)

30.1 Any person responsible for collecting any amount at source (i.e. the seller) shall pay within 7 days the amount so collected to the credit of the Central Government or as the Board may direct u/s 206C(3). He shall issue a certificate in form 27D [vide Rule 37D read with Sec. 206C(5)] to the buyer within 10 days from the date of debit or receipt of the amount from the buyer, giving inter alia details of the sum collected and the rate at which the tax has been collected.

30.2 The certificate is to be attached to the return of income of the buyer and credit shall be given to him for the amount so collected for the assessment year for which such income is assessable.

31. Returns regarding tax collected at source u/s 206C(5A)

31.1 U/s 206C(5A), every person collecting tax in respect of the period ending on 30th September and 31st March in each financial year, shall file returns to the Assessing Officer referred to in Rule 37F. (This could be the Income tax Officer designated by the Chief Commissioner or Commissioner of Income-tax within whose area of jurisdiction the office of the person responsible for collecting tax under chapter XVII BB is situated; or the Income tax Officer in whose jurisdiction, the office of the person responsible for collecting tax under Chapter XVII BB is situated). The returns to be filed are indicated in column (2) of the Table below in the form specified in the corresponding entry in column (3), within one month from the end of the relevant period

TABLE

| Sl.No. | Nature of return | Form No |
|--------|---|---------|
| 1 | Half-yearly return of collection of tax u/s 206C from the buyers of alcoholic liquor for human consumption (other than Indian made foreign liquor) and tendu leaves | 27EA |
| 2 | Half-yearly return of collection of tax u/s 206C from buyers of timber obtained under a forest lease | 27EB |
| 3 | Half-yearly return of collection of tax u/s 206C from buyers of timber obtained by any mode other than under forest lease | 27EC |
| 4 | Half-yearly return of collection of tax u/s 206C from buyers of any | |

32. Returns regarding tax collected at source on computer media u/s 206C(5B) (vide Rule 37EA)

32.1 With effect from 1.4.1997, if a person responsible for collecting tax desires to file any return on a computer media (Rule 37EA), he shall deliver the same to the Income-tax Officer referred in rule 37F such return on a computer media within one month from the end of the period for which the return mentioned in the aforesaid table is required to be filed (vide CBDT circular in F.No. 275/60/99-IT(B) dated 10.10.2000).

32.2 The Board has prescribed in Notification No. S.O. 535(E) dated 02.07.1999 of Income-tax (25th Amendment) Rules, 1999 (238 ITR St.40) the computer media specifications, as under :-

- a. CD ROM of 650 MB capacity; or
- b. 4MM 2GB/4GB (90M/120M) DAT cartridge; or
- c. 3.5" (1.44 MB) floppy diskette

32.3 While filing a return on computer media, the person responsible for collecting tax shall ensure that :-

- i. such return is accompanied with form 27B and verified in the manner indicated therein.
- ii. only one return is included on one unit of computer media, However, a single return may spawn multiple units of the same computer media. If more than one unit of computer media is used in the case of a particular type of return, then each computer media will be serially numbered;
- iii. in a case where the data relating to a return is copied using data compression or backup software utility, the corresponding software utility or procedure for its decompression or restoration shall also be furnished along with the computer media return.
- iv. the return is accompanied with a certificate regarding clean and virus free data.

33. Tax collection account number

33.1 w.e.f. 1.6.2002, as per provisions of Section 206CA applying for a tax collection account number by the person collecting tax is made obligatory. The person has to apply to the Assessing Officer for allotment of such number.

33.2 The number allotted has to be quoted in all challans of payment, certificates issued under section 206C, in the returns filed under section 206C and in all other documents. Failure to comply with these provisions would attract penalty of a sum of Rs.10,000/- under section 272BBB.

34. Action by Assessing Officer**Scrutiny of returns**

34.1.1 The Assessing Officer shall scrutinise the return filed by the assessee for the correctness and completeness of statements contained therein.

34.1.2 Failure to collect tax makes the person concerned personally responsible for paying tax to government. Tax not paid will be a charge on his assets.

34.1.3 If it is found that the person responsible to collect tax at source had failed to do so, then simple interest has to be charged at the rate of one and one fourth (with effect from 1.6.2001 substituted for two per cent) per month or part of month on the amount of such tax from the date on which such tax was collectible to the date on which the tax was actually paid. This is besides the recovery of the principal TCS amount which ought to have been collected by the seller.

34.1.4 If it is found that the person has failed to furnish the certificate for tax collection and the half-yearly return, the Assessing Officer shall levy a penalty of Rs.100 per day of delay during which, the failure continues as per provisions of Section 272A(2)(c) and Section 272A(2)(g). In accordance with the proviso to section 272A, penalty leviable shall not exceed the amount of tax deductible / collectible.

Prosecution

34.2.1 A Person, who has collected the tax but failed to deposit the tax so collected with Government as specified will be liable for prosecution under section 276BB and on conviction may be liable with rigorous imprisonment of a minimum of 3 months but which may extend to 7 years and fine. In cases where prosecution is initiated, the details should be maintained in the register at Annexure-IX.

Gathering data from other agencies

34.2.2 The Assessing Officer should take steps to gather particulars viz. names, addresses and turnover particulars from agencies like the State Excise Department, Forest Department. He should take appropriate action periodically. This is a continuous process.

C : ADVANCE TAX

35. Introduction

35.1 The assessee has to pay advance tax on his current income including capital gains and receipts of casual nature which are not exempt. Advance tax is payable during the financial year in every case where the total liability to pay such tax for the year is Rs. 5000 or more. The assessee is required to pay advance tax on the basis of their estimated total income and compute their tax liability for each instalment on or before the specified due dates. With the adoption of the financial year as the uniform previous year for all assessee, advance-tax is now payable in instalments in all cases on or before specified dates mentioned in sec. 211 which is indicated in the table below:-

INSTALMENTS OF ADVANCE TAX AND DUE DATES

| DUE DATES FOR PAYMENTS | INSTALMENT OF ADVANCE TAX TO BE PAID |
|------------------------------|--------------------------------------|
|------------------------------|--------------------------------------|

| | IN CASE OF COMPANY ASSESSEES | IN CASE OF ANY OTHER ASSESSEE |
|------------------------------|--|---|
| 1 | 2 | 3 |
| On or before June 15 | Not less than 15% of advance-tax | ... |
| On or before September 15 | Not less than 45% of advance-tax Less amount if any paid in the earlier instalment. | Not less than 30% of advance tax |
| On or before December 15 | Not less than 75% of advance tax Less amount(s), if any, paid in the earlier instalment(s) | Not less than 60% of advance tax less amount, if any, paid in the earlier instalment |
| On or before March 15 | Whole amount of advance tax less amount(s) if any paid in the earlier instalment(s) | Whole amount of advance tax less amount(s) if any paid in the earlier instalment(s) |

35.2 Every assessee, who has a liability to pay advance tax, should calculate the tax payable by him and pay the instalments by specified dates as indicated above.

35.3 The Assessing Officer is required to review all liable cases of advance tax, as soon as the due date for payment of the first instalment of advance tax payment is over. U/s 210, the Assessing Officer is empowered to serve on the assessee a notice directing him to pay advance tax. The notice of demand u/s 156 to be served upon the assessee in pursuance of an order u/s 210(3) shall be in form 28 as per Rule 38 of I.T. Rules. For this purpose, the total income is to be computed in accordance with the completed assessment or latest return filed whichever is higher. Such an order must be passed by the Assessing Officer during the financial year but not later than the last day of February. The assessee and the Assessing Officer could amend the calculations based on subsequent variations in the total estimated income of the assessee. The intimation which an assessee has to send to the Assessing Officer u/s 210(5) shall be in form 28A as stipulated in Rule 39.

36. Consequences of non-payment of advance tax

36.1 If an advance tax demand raised u/s 210(3) is not paid, AO may consider resorting to taking penalty action u/s 221 of the I.T. Act. Further, defaults in payment of advance tax or for deferment of instalments of advance tax, penal interest under section 234B and / or 234C is leviable. At the time of filing the return of income, such interest, if payable, is to be calculated by the assessee on the basis of the returned income and paid along with tax under self assessment (u/s 140A) and the challan for such payment should be enclosed with the return at the time of filing his return. For further details of rates of interest to be charged, please refer to the Chapter on Interest.

37. Maintenance of registers and action by Assessing Officer

37.1 Two registers have been prescribed for the purpose of monitoring the advance tax payments viz.

A. Register of assesseees liable to advance tax, I.T.N.S. 122(R) (Annexure-VII)

i. This is register to be maintained by each Assessing Officer. The same register opened once will continue to be used for the subsequent year.

ii. In this register a complete list of all assesseees liable to pay advance tax should be entered alphabetically at the beginning of the Financial year. Two separate parts should be apportioned in the register as under :-

Part - I : All assesseees who are liable to pay first instalment of advance tax on the 15th June.

Part - II : All assesseees who are liable to pay first instalment of advance tax on the 15th September.

iii. The Register is self explanatory. However following points may be borne in mind while filling the columns :-

Columns 1 and 2: To be filled in the first year. In the subsequent years new cases to be added at the end.

Column 3 : Latest particulars relating to last assessment year and total income should be noted and be updated periodically with reference to the following points:

- a. Completion of assessment during the course of the year.
- b. Total income declared by the assessee in a subsequent return of income.
- c. In respect of new assesseees on receipt of collection report from the RCC regarding the first instalment of advance tax.

Column 4 : The serial number of entry in the Advance tax D&CR in respect of payment of advance tax entered against such assesseees.

B. Register of demand and collections of advance payment of tax, I.T.N.S. 122A (Annexure-VIII)

This register is required to be maintained in each Assessing Officer (Circle/ward-wise) for company and Non-Company assesseees. Two separate parts are to be apportioned in the register as discussed below :-

Part I : All Company cases

Part II: All Non-Company cases

Each part is to be subdivided as below :

- a. for existing assesseees in whose cases payment of advance tax is made u/s 210(1)/210(2);
- b. for existing assesseees in whose cases the Assessing Officer passes an order u/s. 210(3) & 210(4); and
- c. for new assesseees who pay the advance tax payment for the first time.

The register is self-explanatory, However, following points while filling the columns should be kept in mind.

Columns 5, 6, and 7 : Any variation (both plus or minus demand) in the computation of advance tax payable on the basis of amendment in the calculation of current income and advance tax payable is to be furnished.

Column 23 at the end of the year, balance of tax remaining to be paid should be noted

Note : This arrear will be reduced when the assessee files the return of income for the relevant financial year in which he has paid the taxes as per the return.

38. Action by inspecting officer

38.1 The Range Additional / Joint Commissioner should periodically inspect and review the registers of Advance Tax mentioned above. Based on the revenue potential of the range he should ensure that in all top cases the AO takes necessary action u/s 210 promptly.

D : SELF-ASSESSMENT TAX

39.1 According to the provisions of section 140A(1), if any tax is payable on the basis of the return of income, the assessee is required to compute the same after considering what is paid under any provision of the Act. Besides, interest payable for delay in filing the return (u/s 234A), interest for default in payment of advance tax (u/s 234B) and interest for deferment in payment of any instalment of advance tax (u/s 234C) should be computed and paid together with the amount of tax due, before the return of income is filed. The challan for such payment should be enclosed with the return.

39.2 On receipt of the return the AO should examine whether the self assessment tax, if required, has been paid. If it has not been paid the assessee should be treated as an assessee in default. Immediate steps should be initiated for the recovery of such self assessment tax .

Annexure - I

CHART SHOWING TDS PROVISIONS AND TIME LIMITS FOR FILING ANNUAL RETURNS AT A GLANCE (In respect of payments to resident assesseees during the financial year)

| Nature of payment / Income from which Tax to be deducted | Section of the Income tax Act | Persons responsible to deduct and pay it to Govt. a/c | When to deduct tax at source | Rate of tax to be deducted | Due date for remitting the tax to Govt a/c | Annual return | | TDS Certificate | |
|--|-------------------------------|---|---|--|--|---------------|---|-----------------|---|
| | | | | | | Form No. | Due Date for filing the return | Prescribed Form | Due date for issue of TDS Certificate |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| Salary/ wages/ remuneration's | Sec 192 | All kind of employer (including Individuals and HUFs) | Monthly at the time of payment / credit in Bank A/c | At the rates prescribed in Part III of the First Schedule of Finance Act | In case of Government on the date of payment. Other cases within 7 days from the date of deduction | Form No. 24 | 31st May of the succeeding Financial year | Form No. 16 | 30th April of the succeeding financial year |

| | | | | | | | | | |
|------------------------|----------|--|---|---|--|-------------|---|--------------|--|
| Interest on Securities | Sec 193 | Persons responsible for paying any income by way of interest on securities | At the time of payment by cash / by cheque or any other mode which ever is earlier | In the case of domestic company @20% as Income Tax + SC @ 5% of Income-tax, In the case of others @ 10% as Income tax + 5% Surcharge of Income-tax Refer Part II of First Schedule of Finance Act | Within one week from the last day of the month in which tax was deducted | Form No25 | 30th June of the succeeding financial year | Form No. 16A | Within one month from the end of the month during which credit has been given or sum has been paid |
| Dividend | Sec. 194 | Persons responsible for paying income by way of dividend | At the time of payment by cash / cheque to any person other than a company and in the case of domestic company if the dividend amount exceeds Rs.2500/- | At the rates prescribed in Part II of the First Schedule of Finance Act (10% as Income-tax plus surcharge at the rate of 5% of Income-tax) | Within one week from the date of such deduction | Form No. 26 | 30th April of the succeeding financial year | Form No. 16A | Within one month from the end of the month of issue of cheque / warrant |

| | | | | | | | | | |
|---|-----------|--|--|---|---|---------------|--|--------------|--|
| Interest other than Interest on Securities | Sec. 194A | Persons other than Individuals and HUFs * | At the time of payment / credit whichever is earlier when the aggregate sums payable during the financial year exceeds Rs.5000 | At the rates prescribed in Part II of the First Schedule of Finance Act @10% as Income tax + 5% surcharge of Income-tax. In the case of a domestic company @20% as income tax + 5% as surcharge of income-tax | Within one week from the last day of the month in which deduction is made | Form No. 26A | 30th June of the succeeding financial year | Form No. 16A | Within one month from the end of the month during which credit has been given or payment has been made |
| Winnings from lottery or cross word puzzle w.e.f 1.6.2001 card game and other games | Sec 194B | All persons responsible to pay to any person | At the time of payment when the amount exceeds Rs.5000 | At the rates prescribed in Part II of the First Schedule of Finance Act 30% as income tax +Surcharge 5% of income-tax | Within one week | Form No. 26B | 31st May of the succeeding financial year | Form No. 16A | Within one month from the end of the month during which payment is made |
| Winnings from horse races | Sec 194BB | Any person being a book maker or a person to whom licence has been granted by Government | At the time of payment when the amount exceeds Rs.2500 | At the rates prescribed in Part II Schedule of Finance Act 30% as income-tax + 5% as surcharge of income-tax | Within in one week | Form No. 26BB | 31st May of the succeeding financial year | Form No. 16A | Within one month from the end of the month during which payment is made |

| | | | | | | | | | |
|---|----------|---|---|--|--|--------------|--|--------------|--|
| Payments to Contractors / Sub contractors | Sec 194C | Persons other than Individuals and HUFs * | At the time of credit / payment whichever is earlier, when the consideration for such contract exceeds Rs.20000 | In the case of payment to contractor @2% as income tax + surcharge 5% of income-tax, Subcontractor @1% as income Tax + surcharge as 5% of income-tax, In case of contractor advertisement @1% as Income tax + surcharge 5% of income-tax | Within one week from the end of month in which deduction is made | Form No. 26C | 30th June of the succeeding financial year | Form No. 16A | Within one month from the end of the month during which the credit has been given or sum has been made |
| Insurance Commission | Sec 194D | Person responsible to pay such commission | At the time of credit / payment which ever is earlier, when the aggregate sums payable during the financial year exceeds Rs.50000 | At the rates prescribed in Part II of First Schedule of Finance Act Non Company 10% as income tax + surcharge 5% of income-tax, Domestic Company 20% as in- come tax + surcharge as 5% of income tax | Within one week from the end of the month in which deduction is made | Form No.26D | 30th June of the succeeding financial year | Form No. 16A | 30th April of the succeeding Financial Year |

| | | | | | | | | | |
|---|--------------|--|---|--|--|--------------|--|--------------|--|
| Payments made out of deposits under National savings scheme (Sec. 80CCA) | Sec 194EE | Persons responsible to make the payment | At the time of payment when the aggregate sum is Rs.2500/- or more in financial year no deduction shall be made in case of payments made to heirs of the depositors | At the rate of 20% as income tax + 5% as surcharge of income-tax | Within one week from the date of such deduction. | Form No. 26F | 30th June of the succeeding financial year | Form No. 16A | Within one month from the end of the month in which payment was made |
| Payments made to non-resident sportsman and sports associations / institutions (including an athlete) referred to Sec. 115BBA | Section 194E | Persons responsible for making the payment | At the time of payment or credit whichever is earlier | At the rate of 10% as income tax + surcharge as 5% of income tax | Within one week from the last date of the month in which the deduction is made | Form No. 27 | 14 days from the end of the quarter | Form No.16A | Within one month from the end of the month in which credit has been given or sum has been paid |

| | | | | | | | | | |
|---|--------------|---|---|---|--|--------------|--|--------------|--|
| Payments as account of repurchase of units referred to in Sec 80CCB(2) by Unit Trust of India or Mutual Funds | Section 194F | Person responsible for making the payment | At the time of payment | At the rate of 20% as income tax + surcharge 5% of income tax | Within one week from the date of deduction | Form No. 26G | 30th June of the succeeding financial year | Form No. 16A | Within one month from the end of the month in which credit has been given or sum has been paid |
| Commission etc. on sale of lottery tickets | Sec 194G | Any person who is responsible for paying to any person who is stocking distributing, purchasing and selling lottery tickets | At the time of payment / credit (transfer to suspense account) whichever is earlier when such payment exceeds Rs.1000 | Income-tax @ 10% + surcharge 5% of income tax | Within one week from the end of the month in which deduction is made | Form No. 26H | 30th June of the succeeding financial year | Form No.16A | Within one month from the end of the month in which credit has been given or sum has been paid |
| Commission / brokerage | Sec 194H | Persons other than individual and HUF * making such payments exceeding Rs.2500 during the financial year | At the time of credit / payment whichever is earlier | At the rate of 5% as income tax + surcharge 5% of income tax | Within a week from the end of the month in which deduction is made | Form 26 I | 30th June of the succeeding financial year | Form 16A | Within one month from the end of the month in which credit has been given or sum has been paid |

| | | | | | | | | | |
|---|----------|---|--|--|--|------------|--|----------|--|
| Rent | Sec 194I | Persons other than individual and HUF * if the rent credited / paid during the financial year exceeds Rs.1,20,000 | At the time of credit / payment whichever is earlier | If the payee is individual and HUF income tax @15% plus surcharge @5% of income-tax. In the case of others income-tax 20% + and surcharge 5% of income tax | Within a week from the end of the month in which deduction has been made | Form 26J | 30th June of the assessment year | Form 16A | Within one month from the end of the month in which credit has been given or sum has been paid |
| Fees for professional or technical services | Sec 194J | Persons other than individual and HUF, if the payment during the financial year exceeds Rs.20000 | At the time of credit / payment whichever is earlier | At the rate of 5% as income tax + surcharge 5% of income tax. | Within a week from the end of the month in which deduction has been made | Form 26K | 30th June of the succeeding financial year | Form 16A | Within one month from the end of the month in which credit has been given or sum has been paid |
| Income in respect of units of mutual fund specified in Sec. 10(23D) | 194 K | Person responsible to pay | At the time of credit / payment which ever is earlier when the aggregate sum exceeds Rs.2500/- | Income-tax @ 10% plus surcharge @5% of income tax | Within one week from the end of the month in which deduction is made | Form No.26 | 30th of April of the succeeding financial year | Form 16A | - do - |

* Note :- Individual and HUF are also included when their total sales gross receipts or turnover exceeds Rs.40 lacs in their business, and in the case of professionals if the professional receipts exceeds Rs. 10 lacs in the Financial Year (Provisions of Sections 44AB).

Annexure - II

T.D.S. RETURN RECEIPT REGISTER

| S.No. | Name of the assessee | TAN No. | Nature of return filed (Form Nos. 24,25,26 & 27) | Date of filing Return | Initials of persons receiving the return in the section (TA/Sr. TA) | Remarks |
|-------|----------------------|---------|--|-----------------------|---|---------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| | | | | | | |

Annexure - III

REGISTER OF PENALTIES UNDER SECTION 271C, 272A(2) (c) & 272 BB

| S.No. | TAN | Name & Address of Tax Deductor | Status | Financial Year | Section under which penalty initiated (Date of initiation) | Date of service of show cause penalty notice | Limitation Date for passing penalty order | Date of penalty order | Amount of penalty imposed | Remarks |
|-------|-----|---|--------|-------------------|--|--|---|-----------------------------|---------------------------------|---------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| | | | | | | | | | | |

NOTE : Penalties initiated under different sections should be entered in different portions of this Register

Annexure - IV

DEMAND AND COLLECTION REGISTER (TDS)

| S.No. | TAN | Name and Address of employer | Financial year | No. of entries in which short deduction / payment or no deduction discovered | Date of checking | Amount of non/short deduction of tax | | Interest u/s 201(1A) | Total demand (7+8+9) |
|-------|-----|--|----------------|--|------------------|--------------------------------------|-----------|----------------------|----------------------|
| | | person responsible for Tax deduction at source | | | Date of order | Income-tax | Surcharge | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| | | | | | | | | | |

| Penalties and other items | | Date of service of notice of demand | Collections | | | | | Interest u/s 220(2) | |
|---------------------------|--------|-------------------------------------|-------------|-----------|----------------------|---------|-------|---------------------|------------|
| Section | Amount | Date on which demand is due | Tax | | Interest u/s 201(1A) | Penalty | Total | Demand | Collection |
| | | | Income-tax | Surcharge | | | | | |
| 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| | | | | | | | | | |

| Challan Number Date of Payment | Initial of official posting the collection | Remarks |
|-----------------------------------|--|---------|
| 21 | 22 | 23 |
| | | |

Annexure - V

REGISTER OF DAILY COLLECTIONS-INCOME TAX-TDS (SALARY AND OTHER THAN SALARY)
(COMPANY AND NON-COMPANY)

Assessing Officer's Ward / Circle /Range

| | | | | | | | | | | | | | | |
|--|--|--------------------|--|------------------|---------------------|----------------------------|-------------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
| ----- | | | | | | | | | | | | | | |
| ----- | | | | | | | | | | | | | | |
| S.No. D & CR from horse interest | Date of No. | Challan Payment | Name of No. | P.A.No. Payer | Salary ----- | Interest on | Dividends Securities | Interest other | Winnings than | | | | | |
| ----- | | | | | | | | | | | | | | |
| | | | | | TAN | Income Surc. Tax | Income Surc. tax | Income Surc. tax | Income Surc. tax | Income Surc. tax | Income Surc. tax | Income Surc. tax | Income Surc. tax | Income Surc. tax |
| ----- | | | | | | | | | | | | | | |
| ----- | | | | | | | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| 16 | | | | | | | | | | | | | | |
| ----- | | | | | | | | | | | | | | |
| ----- | | | | | | | | | | | | | | |
| ----- | | | | | | | | | | | | | | |
| Winnings from lotteries and crossword puzzles | Payments to contractors / sub-contractors | | Insurance Commission Payments -----to NRI | | Other items | Tax collected at source | | | | | | | | |
| ----- | | ----- | | Incometax | Surcharge sportsmen | ----- | | | | | | | | |
| ----- | Income-tax | Surc. | Incometax | Surcharge | or | Inc.tax | S.charge | From | From | | | | | |
| Surcharge | | | | | | | | | | | | | | |
| Alcoholic Forest | | | | | | | | | | | | | | |
| | | | | | | | liquor | Produce | | | | | | |
| | | | | | | | Sales | sales | | | | | | |

| | | | | | | | | | | | |
|------------------|-----------|----------|---------|----|----|----|----|----|----|----|----|
| 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| Total IT & SC | Penalties | Interest | Remarks | | | | | | | | |
| 29 | 30 | 31 | 32 | | | | | | | | |

Annexure - VI

REGISTER FOR ALLOTMENT OF TAX DEDUCTION ACCOUNT NUMBER (TAN)

| -----Name and address of Remarks | Date of receipt of | Status | P.A. No. | Source(s) for TAN | TAN | Date of issue |
|---|--|--------|----------|-----------------------|----------|------------------------|
| Person responsible for Tax deduction at source | application in Form No. 49B (Rule 114A) | | | Which TAN required | Allotted | of allotment letter |
| ----- | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| 8 | | | | | | |
| ----- | | | | | | |
| | | | | | | |
| ----- | | | | | | |

Annexure - VII

REGISTER OF ASSESSEES LIABLE TO ADVANCE TAX [(I.T.N.S. 122(R))]

| Sl. No. | Name of the assessee ----- PAN | Financial Year | | Financial Year | | Financial Year | |
|------------|---|--|---|--|---|--|---|
| | | Last Assessment Year ----- Total Income | Sl. No. of the entry and part and page No. of the Advance tax D & CR | Last Assessment Year ----- Total Income | Sl. No. of the entry and part and page No. of the Advance tax D & CR | Last Assessment Year ----- Total Income | Sl. No. of the entry and part and page No. of the Advance tax D & CR |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| | | | | | | | |

Annexure - VIII**REGISTER OF DEMAND AND COLLECTIONS OF ADVANCE PAYMENT OF TAX (ITNS 122A)**

| Sl. No. | Name, Address and PAN of | Demand | | | | Total tax payable | Date of Receipt / Service of Order 210(3) |
|---------|--------------------------|-------------------------------|----------------------------|-----|-----|-------------------|---|
| | | Amount of Advance Tax payable | Section (For Modification) | (+) | (-) | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| | | | | | | | |

| Collection | | | | | | | |
|--------------|--------|---------------|--------|----------------|--------|---------------|--------|
| I Instalment | | II Instalment | | III Instalment | | IV Instalment | |
| Date | Amount | Date | Amount | Date | Amount | Date | Amount |
| 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| | | | | | | | |

| Total of Cols. 10,12,14, & 16 | Arrears as on 31st March Col. 7 - Col. 17 | Penalty u/s. 221 | | | |
|-------------------------------|---|------------------|--------|------------|--------|
| | | Demand | | Collection | |
| | | Date | Amount | Date | Amount |
| 17 | 18 | 19 | 20 | 21 | 22 |
| | | | | | |

| | |
|---|---------|
| Arrears as on 31st March Col. 20 - Col. 22 | Remarks |
| 23 | 24 |
| | |

Annexure - IX

REGISTER OF CASES IN WHICH PROSECUTION PROCEEDINGS INITIATED U/S 276B/276BB

| | | | | | | |
|-------|---------|------------------|----------|----------------------------|-----------------------------------|---------------------------|
| | | | | | | |
| S.No. | TAN | Name of Deductor | P.A. No. | Nature of default in brief | Date on which CIT | Date on which prosecution |
| | Remarks | | | | Approved filing of Prosecution | proceedings filed |
| | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| 8 | | | | | | |
| | | | | | | |
| | | | | | | |

Chapter- 10

POST ASSESSMENT COLLECTION PROCEDURE

1. The process of collection after assessment begins when a demand notice is sent to the assessee whether as a result of an order made by the Assessing Officer or by his superiors. An intimation under section 143(1) is also now deemed to be a notice under section 156 of the Income-tax Act, 1961. The Assessing Officer is responsible for the collection of tax whether the demand represents the demand raised by himself or is the result of any other order passed by any of the higher authorities. This chapter deals with the procedure and other issues relating to post assessment collection.

2. Payment of taxes and levy of interest

2.1 Chapter XVII, Part D of Income tax Act, 1961, deals with collection and recovery. The tax payable on regular assessment should be paid within 30 days of the service of the notice of demand under section 156. Whenever the Assessing Officer has reason to believe that the interests of revenue may be jeopardized if the full period of 30 days is allowed to the assessee to pay the tax, then, with the prior approval of the Joint/Addl. Commissioner, he can curtail or reduce the aforesaid notice period.

2.2 If the amount mentioned in any notice of demand is not paid within the stipulated period, the assessee shall be liable to pay simple interest at the prescribed rate. Currently this is 1.25 per cent per mensem, commencing immediately after the end of the said period.

3. Extension of time for payment

3.1 Where the assessee finds it difficult to make the payment within the time specified in the notice of demand, he can make an application to the Assessing Officer before the expiry of the due date to grant further time to pay the tax. The Assessing Officer before granting extension of time or instalments, may prescribe certain conditions. Even in cases where extension of time in the form of stay of demand or grant of permission to pay the amount in instalments is granted, interest under section 220(2) will be payable by the assessee. Applications for stay of demand or grant of instalments, received after the expiry of the due date, cannot be entertained under section 220(3). The assessee is required to make an application asking for extension of time or for granting of instalments. The Assessing Officer should not grant this facility in the absence of such a request. In cases where instalments or the commitments made with regard to payments are not honoured, the penal provisions should invariably be invoked. Coercive measures should also be taken to realise the arrears.

3.2 The grant of instalments, should be through a specific and precise order, showing the due dates of payment and amount of each instalment. Every such order, should invariably clarify that in the event of there being default in the payment of any one instalment on the date it falls due, the entire amount of the demand then outstanding shall become immediately payable. The assessee will then be deemed to be in default in respect of the entire amount of tax demand.

3.3 Though in law, the applications for stay, or grant of instalments in respect of demand not in dispute, received after the expiry of the due date under section 220(1) cannot be

entertained, u/s 220(3), the Assessing Officer is not precluded from receiving part payments whenever made. It will also be for the Assessing Officer to determine what coercive steps, if any, he should take. That would depend upon the circumstances of the case. Also, after the issue of a recovery certificate, the Tax Recovery Officer is also competent to grant instalments u/s 225(1).

3.4 In cases where assessments are made on protective basis, the collections of demands is not to be enforced by coercive steps. However, if the substantive assessment itself is set aside or cancelled, the Assessing Officer should immediately take steps to enforce the protective demand.

4. Grant of stay and instalments

4.1 U/s 220(6) of the Income tax Act, the Assessing Officer may, subject to such conditions as he may think fit to impose, treat the assessee as not being in default in respect of the amount in dispute, if the appeal remains undisposed of, even though the time for payment may have expired.

4.2 It should be noted that section 220(6) does not refer to "stay" of demand. It only empowers an Assessing Officer to treat "an assessee as not being in default". In the succeeding paragraphs, for the sake of brevity, the word 'stay' has been used, but it refers to treating the assessee as not being in default. Whenever an Assessing Officer passes an order under section 220(6) or under section 220(3) or section 220(7), he should invariably use in such order, only the expression which is found in the section viz., that he agrees to treat the assessee as not being in default in respect of the amount specified subject to such conditions as he may deem fit to impose. He should not use the expression 'stay' in any order that will be communicated by him to the assessee.

4.3 Stay applications, have to be dealt with, in accordance with the guidelines stipulated by the Board in Instruction No. 1914 dated 02.12.1993. In exercising this discretion, the Assessing Officer should take into account circumstances, such as, whether:-

- i. the points in dispute relate to facts or are a consequence of different interpretations of law;
- ii. the additions have been made as a result of detailed investigation;
- iii. they are based on materials gathered through enquiry / survey / search and seizure operations;
- iv. they have been assessed elsewhere by way of protective assessment and the tax thereon has been paid by such person etc.

The magnitude of additions to the total income returned cannot be the sole determinant in this regard. Each disputed addition will have to be duly considered to arrive at the quantum of tax that needs to be stayed.

4.4 However, in exercising this discretion, the Assessing Officer should decide in favour of the assessee's application for stay in the following situations : -

- i. the points in dispute have been decided in favour of the assessee in an earlier order by the Commissioner / Commissioner of Income tax (Appeals) or the Income tax Appellate Tribunal or the High Court; and

ii. the disputed point arises because the Assessing Officer has adopted an interpretation in respect of which, there exist conflicting decisions of one or more High Courts, or jurisdictional High Court has given a contrary interpretation and the Department's appeal before the Supreme Court is pending.

4.5 It needs to be pointed out that even in the situations indicated above, what should be stayed is only the demand attributable to such disputed points.

4.6 When a request for stay has been considered by the Assessing Officer, his decision should always be recorded in writing and communicated to the assessee.

4.7 While granting stay, the Assessing Officer may impose such conditions as he may think fit. Thus the Assessing Officer may :-

- i. require the assessee to offer suitable security to safeguard the interests of revenue,
- ii. require the assessee, during the pendency of the appeal, to pay towards the disputed taxes, a reasonable amount in lump sum or in instalments,
- iii. require an undertaking from the assessee that he will cooperate in the early disposal of the appeal, failing which the stay order will be cancelled,
- iv. reserve a right to review the order passed by him after the expiry of reasonable period, say six months, even if the appeal is not disposed of, to ascertain if the assessee has fulfilled the undertaking at (iii) above as well as to consider any other development such as a pronouncement of a higher court on the points indicated above, in favour of the department.
- v. Clearly mention that during the currency of the stay if any refund becomes payable to the assessee by the Department it will be adjusted towards the taxes stayed.

4.8 While the Assessing Officer can exercise his discretion taking note of facts peculiar to each case, conditions (iii), (iv) and (v) above should invariably be imposed.

4.9 While exercising his discretion under this sub-section, the Assessing Officer has to take into account the nature of the dispute which has generated the additional demand and not just the financial capacity of the assessee which may or may not be relevant to the decision to be taken. Thus, for example, if the disputed demand is of the nature indicated above, the fact that the assessee is in a position to pay it will not preclude favourable consideration of his stay application.

4.10 According to Board's Instruction No. 1287 dated 12th November, 1979, the Assessing Officer has the right to adjust any refund that may arise in respect of any other year even against demand with respect to which the assessee is not considered as being in default. The procedure for adjustment of refund against demand is discussed in the Chapter on Refunds.

4.11 Where the demand stayed by the Assessing Officer is rupees one lakh or more, the Assessing Officer will intimate the relevant particulars i.e., the details of pending appeals, the quantum of demand stayed and the condition imposed, to the Joint / Addl. Commissioner of Income tax. The Addl./Joint Commissioner of Income-tax will in turn request the Commissioner of Income-tax to write to the concerned Commissioner of Income-tax (Appeals). The Commissioner of Income-tax will request the Commissioner of Income-tax

(Appeals) for early disposal of such appeals. These instructions apply *mutatis mutandis* to demands created under other direct taxes enactments.

4.12 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 Officers shall not treat the assessee as being 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; he will continue to treat the assessee as not being in default in respect of such part of the tax till the prohibition or restriction is removed. The tax on the Indian income should be calculated and collected at the average rates applicable to the total income.

4.13 There can be instances where the assessee approaches the higher authorities for grant of stay or instalment facilities. In such cases, a report must be called from the Assessing Officer. Also, suitable instructions should be issued to him expeditiously. Ordinarily, the higher authorities should not interfere in matters of grant of stay. Instructions for stay, when issued, should be in conformity with the guidelines issued by the Board.

4.14 Where there are arrears of income tax, wealth tax and gift-tax against an assessee and payments are made by him in instalments, these should, in the absence of any specific request in this regard from the assessee, be first adjusted against wealth tax and gift tax dues and thereafter only against income tax dues.

4.15 Security to be furnished by the Assessee

4.15.1 The Assessing Officer, while treating the assessee as not being in default, may direct him to offer suitable security to safeguard the interests of the revenue.

4.15.2 Where the assessee owns a property which is free from encumbrances, the assessee may be asked to deposit the title deed with the Income-tax Officer. This is called equitable mortgage. The assessee should be asked to deposit the title deed first and after this a letter should be obtained in the form given in Annexure I. It is not necessary in such cases, to draw a regular deed of mortgage. The Assessing Officer should also ensure that, in all such cases title deeds are kept in his personal custody and duly handed over to his successor, in the event of his transfer.

4.15.3 In cases where the assessee desires to offer his immovable property as security but does not possess the title deed, he should be asked to execute a registered regular mortgage deed on non-judicial stamp paper of the full value as provided in article 40(B) of the Stamp Act. He should also be asked to furnish an upto date encumbrance certificate, from the Sub-Registrar along with the title deeds.

4.15.4 A specimen of the deed of mortgage is given in Annexure II at the end of the Chapter.

4.15.5 If the assessee does not have any property of his own, he can offer any other person owning a property, as surety. In such a case, the surety will have to execute a surety bond on a non-judicial paper of Rs.10 and if the property involved is immovable property, it will have to be registered. If however, only the personal security of the surety is accepted, it is not

necessary to get the security bond registered. The security bond should be in the form given in Annexure III at the end of this Chapter.

4.15.6 In the case of movable property the pledge can be effected by the delivery of the goods to the Assessing Officer so as to avoid any further complications. The agreement of the pledge should be on a non-judicial stamp paper. Its value as given in Article 6 of the Stamp Act, would vary with the amount pledged. The agreement of the pledge should be in the form given in Annexure-IV at the end of this Chapter.

4.15.7 The Assessing Officer can also obtain bank guarantees from the assessee in suitable cases. It should however be ensured that bank guarantees are periodically renewed and not allowed to lapse. The Assessing Officer should make it a point to include a specific note in the handing over note, in the event of his transfer, about cases in which bank guarantees have been obtained.

5. Measures to enforce collection and recovery of outstanding demand

Levy of penalty under section 221

5.1 The Assessing Officer is empowered under section 221 of I.T. Act to levy a penalty in cases where the assessee does not pay the demand in time. Levy of penalty is obligatory where the assessee is in default or deemed to be in default in making a payment of tax. The Assessing Officer should give a reasonable opportunity of being heard before he levies the penalty.

5.1.1 If after giving such opportunity, he finds that the assessee is not in default or is not deemed to be in default or that the default was for good and sufficient reason, he may not impose a penalty.

5.1.2 The quantum of penalty to be imposed under section 221(1) is discretionary. The maximum penalty which could be imposed is equal to the amount of tax in arrears.

5.2 The order levying the penalty should be speaking and it should clearly specify the amount of penalty payable by the assessee. The demand notice and challan for penalty imposed should be issued only after a specific order under section 221 is made in form I.T.N.S. 128. The relevant particulars should be entered in the D & C Register.

5.3 The penalty levied under section 221(1) cannot be regarded as an action taken to recover the tax from the defaulter; it is merely a punishment for the default of the taxpayer. Various modes of recovery have been set out in Section 222 and in Sections 226 to 228. It is only when action is taken in accordance with these sections that recovery proceedings can be said to have commenced, properly speaking.

5.4 Where as a result of any final order, the amount of tax with respect to which the penalty was levied is wholly reduced, the penalty levied is to be cancelled and the amount paid, if any, should be refunded.

6. Recovery under Section 226 of I.T. Act

6.1 All steps mentioned in sections 226 to 229 should be taken before statements are drawn up by the TROs. Once a statement of arrears is drawn up by the Tax Recovery Officer, the Assessing Officer is precluded from resorting to any of the modes of recovery vide section 226(1). Different modes of recovery are not mutually exclusive.

6.2 Recovery under Section 226(2) of I.T. Act

6.2.1 U/s 226(2) of the Income-tax Act, 1961, the Assessing Officer has the power to require any person from whom salary is receivable by the defaulter to remit a portion of the salary direct to him towards the arrears of tax due. The Assessing Officer may recover the outstanding tax by asking the employer to deduct the sum from any amount chargeable under the head salary, payable to the defaulter. Any part of the salary exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil procedure 1908 shall be exempt from any requisition made u/s. 226(2). No attempt should be made to recover Income tax from pension in view of provisions of Sec. 11 of the Pension Act, which provide that a pension shall not be liable to attachment at the instance of a creditor for any demand against the pensioner.

6.2.2 Similarly, attempt should not be made u/s 226(2) to recover the arrears out of fees and honorarium paid to artistes for broadcasting programmes from All India Radio Station as these payments do not exactly fall under the definition of salaries.

6.2.3 Cases of attachment of salaries should be dealt with only under sub-section (2) and not under sub-section (3) of section 226. This is on the principle that in a statute a special provision overrides a general provision dealing with same subject.

6.3 Recovery under Section 226(3) of I.T. Act

6.3.1 Under section 226(3), the Assessing Officer has the power to require any person from whom money is due and may become due to the assessee or any person who holds or may subsequently hold money on account of the assessee to pay to the Assessing Officer so much of the money as is sufficient to cover the amount of tax arrears due from him. This is referred to as a garnishee order. It is not necessary that the person in relation to whom the garnishee order is issued, should himself be a defaulter. However drawing up of a statement of arrears is a mandatory requirement before the Tax Recovery Officer can take recovery proceedings under this provision.

6.3.2 Section 226(3) refers not merely to a person who holds money but also to a person who may subsequently hold money for or on account of the assessee. "May become due" etc., in this provision, refers to claims arising out of some relationship subsisting at the time of issue of the notice between the assessee and the person served with the notice- such as banker and customer, debtor and creditor or annuitant and payer of the annuity. The provision will not cover the case of a bank with which the assessee has never dealt within the past or of a person with whom he has no dealings or a person with whom he may have dealings in the future.

6.3.3 The notice under section 226(3)(i) should ordinarily state the amount believed to be due or falling to be due to the assessee. In any case, the person should comprehend clearly the amount that is referred to.

6.3.4 The notice under section 226(3) can also be issued in respect of joint accounts and in the absence of any specific information, the shares in such joint accounts should be presumed to be equal. A copy of the notice is required to be sent to the assessee at his last known address and in the case of joint accounts, a copy of the notice u/s 226(3) should be sent to all the joint account holders.

6.3.5 Compliance with the terms of section 226(3), is mandatory on the part of the recipient of the notice. It is specifically provided in the Act that when a notice under section 226(3) is issued to a post office, a banking company or an insurer, it will not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made. This is notwithstanding any rule, practice or requirement to the contrary. Also, any claim by any other person on the property regarding which a notice under section 226(3) has been issued arising after the date of issue of notice will be void in relation to any demand contained in the notice.

6.3.6 Notice u/s 226(3) can be issued by the Assessing Officer to the Customs authorities where they seize some currency but ultimately decide not to confiscate. In law, the Customs authorities would hold money on account of the assessee only when a finding is given by them that the currency could not be confiscated under the law and will become refundable to the assessee. However, the Customs authorities will inform the Department only when the amount to be refunded exceeds Rs.1000.

6.3.7 If the person on whom a notice u/s 226(3) is served, denies his liability to pay on the ground that he does not hold any money for or on account of the assessee in default, then he cannot be forced to make the payment. However, the Assessing Officer should intimate each case of denial of liability to the defaulter assessee to ensure that:-

- i. the debtor's denial can be promptly verified with the help of evidence of debt that may be produced by the assessee; and
- ii. No garnishee should be allowed to delay or defer the payment of the amount covered by the garnishee proceedings except by filing a statement on oath as prescribed u/s 226(3)(vi). Intimation in the form of a simple letter should not be recognised and the garnishee in such cases should be advised to file a proper objection in the form of a statement on oath before he is allowed not to pay the tax covered by the proceedings. If such statement is not forthcoming within about a fortnight after the due date, further steps must be taken to recover the amount due from the garnishee. The Assessing Officer, at the time of issuing notice, should supply full information that is available with him. This could be done in the form of a letter addressed to the debtor, the Reserve Bank / public financial institutions. In such letter, it should be clarified that any other amounts due to the defaulter, as not mentioned in the notice, should also be paid towards the tax dues of the defaulter. If full details are not immediately available, the AO should, to begin with, give all the information available with him. He should furnish the rest of the details after collecting the same from his records or through local enquiries, within a fortnight of the first communication.

6.3.8 Notices u/s 226(3) in original should invariably be sent along with a covering letter. The notices to a bank should not be issued with regard to the principal or face value of Government securities.

6.3.9 When a person to whom a notice is issued, denies owing any amount to the assessee, the Assessing Officer should make periodical enquiries and issue, a fresh notice for any amount which might become due subsequently.

6.3.10 If the person on whom the Assessing Officer has served the notice of attachment, discharges any liability to the assessee directly after receipt of the notice, he would, to that extent, be personally liable to the Assessing Officer, if the tax remains unpaid. If he pays any amount to the Assessing Officer it would be sufficient discharge of his liability to the assessee. If he does not pay any amount, the Assessing Officer should take prompt action for recovery of tax through the Tax Recovery Officer as if it were arrears of tax due from him.

6.3.11 When a garnishee order is served attaching the fixed deposit in the name of the assessee, the Assessing Officer steps into the shoes of the depositor and the bank has an obligation to make the payment towards tax arrears, even before maturity. This should be insisted upon whenever a garnishee order is issued attaching fixed deposits.

6.3.12 The Assessing Officer should grant a receipt for any amount received in compliance with the notice issued u/s 226(3).

6.4 Recovery under section 226(4)

6.4.1 Under section 226(4), the Assessing Officer has the power to attach any money due to the assessee but lying in a Court. The Assessing Officer can apply to the court for payment of such money to him towards the taxes due from the assessee. As the assessment creates a debt, the State takes priority over other debtors. Tax assessed more than twelve months before the date of liquidation of a company, however, will have no priority over other debts and will rank in the same position as other secured debts.

6.4.2 In respect of income-tax already assessed, the government has a right of preference over other debts. The fact that a creditor has attached the assessee's property can give him no preference over the government. An attachment confers no title to property.

6.5 Issue of Dstraint Warrant under section 226(5)

6.5.1 For realisation of tax arrears, the Assessing Officer has the power u/s 226(5) to issue a dstraint warrant, by restraint and sale of movable property, in accordance with the third schedule to the Income-tax Act, 1961. The Assessing Officer should be duly authorised by the Commissioner of Income-tax for exercising this power.

6.6 Procedure to Initiate Dstraint Proceedings

6.6.1 Dstraint proceedings are initiated by the Assessing Officer by issuing a dstraint warrant in the prescribed form (vide Annexure-I at the end of this chapter) in favour of an Inspector. The warrant authorises the Inspector to use the powers of dstraint. Before serving the dstraint warrant, the Assessing Officer should thoroughly go through the file and see that all pending actions like rectification applications, stay petitions, appellate orders etc. are attended to.

6.6.2 Then, a notice should be issued to the defaulter indicating the amount of tax etc. due from him.

6.6.3 As the next step, the Assessing Officer should issue a distraint warrant in the name of the Inspector.

6.6.4 On receipt of the warrant, the Inspector should take the following steps :

- a. he should conduct a confidential enquiry to ascertain the time at which the assessee will be available at the business premises.
- b. gather information about the movable properties, available at the premises of the assessee, capable of being dealt with under section 226(5)
- c. while proceeding to the assessee's premises he should carry with him :
 - i. the original and the office copy of the notice as indicated in Annexure-V at the end of this chapter. He should also take care to note the D.C.R. number corresponding to the pending demand for each assessment year.
 - ii. the original and office copy of the distraint warrant as per Annexure-VI at the end of this chapter.
 - iii. Receipt books as per Annexure-VII at the end of the Chapter.
 - iv. Blank challan forms duly signed by the Assessing Officer
 - v. Adequate number of forms of I.T.C.P. 12, 13, 14, 23, 29, 30.
 - vi. Adequate stamps to be affixed on I.T.C.P. 23.
 - vii. his identity card

Note 1: If the defaulter wants some time to produce some papers or for collecting cash to pay the tax demanded, reasonable time, say 2 hours, may be allowed before taking further action.

Note 2: Normally the Inspector should visit the business premises of the defaulter in the early part of the day, say within an hour of commencement of the business. If, however, the defaulter conducts business at his residence, the Inspector may visit him at his residence. This visit also should be done in the earlier part of the day. In either case, the idea is that the visit should commence after sunrise and end well before sunset.

6.6.5 After making sure that the entire part of the demand mentioned in the letter (as per Annexure-V at the end of this chapter) is still due from the assessee, the Inspector should request the defaulter to pay the dues out of the cash available with him or in the premises. If the defaulter tenders cash, a temporary receipt may be issued (as per Annexure-VII at the end of this chapter). If, the cash available is sufficient only to meet a part of the dues, the Inspector should request the defaulter to meet the Assessing Officer, indicating the time, the date and the place for such meeting.

6.6.6 If the defaulter cooperates with the Inspector in the execution of the warrant by paying the amount due, the Inspector returns and submits a report to the Assessing Officer. If, however, the defaulter does not cooperate with the Inspector, the Inspector should serve a copy of the distraint warrant upon him. It is absolutely necessary that this is done before any further step is taken. As far as possible the notice should be served on the defaulter himself. However, in case the defaulter is available but refuses to receive it, service by affixture, as per the procedure laid down in the Code of Civil Procedure may be adopted. In this connection, attention is invited to Board's letter F. No. 831(1D)-RSP/63-64, dated 17.08.1964. If the defaulter is not present, it may not be advisable to effect service on any adult member of the family, since coercive process is being taken and it is better that the notice is served on the assessee himself. However, if an adult male member is there and he is the one who usually attends to the business of the defaulter or is otherwise closely connected with him, the notice

may be served on him also. But on no account should the service by affixture be resorted to at the very first instance. If the defaulter is absent from the premises, the Inspector must make at least one or two attempts to serve the warrant before he resorts to service by affixture.

6.6.7 After the service of the warrant, the Inspector should demand payment of tax forthwith. On failure of the defaulter to clear his tax dues, the Inspector must attach the movable property of the defaulter. The word 'forthwith' has been described as 'as expeditiously as possible' in the Code of Civil Procedure. If the defaulter wants to pay the amount in an hour or two by borrowing or otherwise, he must be given time. If he does not pay the amount within a reasonable time, say, one or two hours, after service of the warrant, the Inspector should attach movable properties in the possession of the defaulter by actual seizure.

6.6.8 Actual seizure involves a change of possession from the defaulter to the Assessing Officer. The words 'actual seizure' only means taking physical possession and does not mean seizure by means of force or violence on the property or on the person of the defaulter. The first and foremost duty of the Inspector is to take the cash. If it is not tendered voluntarily, it should be attached and handed over to the Assessing Officer in accordance with the order contained in the latter part of warrant of distraint (as per Annexure-VI at the end of this chapter).

6.6.9 The seizure should be done in the presence of two witnesses and a Panchanama should be drawn up after the seizure.

6.6.10 If the cash thus attached is not sufficient to meet the outstanding dues, the Inspector should proceed to attach the other movables. In the normal course, the Inspector should proceed to attach the other movables which can be easily removed and transported to the Income-tax Office to be kept there in safe custody, pending the Assessing Officer's final orders in the matter. If movables other than cash are there, the Inspector should not attach them but make a list of them, obtain a sapurdnama (I.T.C.P. 23) from him and send a report to the Assessing Officer accordingly. (If the defaulter is not in a position to pay any amount by way of monthly instalments, the bond should be filled in mentioning 'NIL' in the relevant blank space). The idea is that the Assessing Officer, (if this has not, already been done) may request the Tax Recovery Officer to proceed against these properties under Rule 31.

7. Recovery of tax in pursuance of agreements with foreign countries (sec.228A)

7.1 Where the specified authority of a foreign government, with which Government of India has an agreement for recovery of Income-tax, sends to the Board, a certificate for recovery of any tax due to such foreign country from any person having property in India, the Board may forward such certificate to any Tax Recovery Officer within whose jurisdiction such property is situated. On receipt of such certificate, the Tax Recovery Officer will proceed to recover the amount specified in such certificate in the same manner in which he would proceed to recover the amount specified in the statement of arrears drawn up under section 222 of the Income tax Act. Such sums should be remitted by him to the Board after deducting the expenses related to such recovery proceedings.

7.2 Section 228A(2) provides that notwithstanding the issue of a tax recovery certificate u/s 222, if the assessee in default has property in a foreign country with which the Central

Government has entered into an agreement for the recovery of income-tax, the Assessing Officer may forward to the Board a certificate specifying the amount of arrears due from the assessee. The Board may, then, take such action thereon as it may deem appropriate, having regard to the terms of the agreement with such foreign country.

8. Recovery of tax from companies in liquidation

8.1 If any company goes into liquidation, the liquidator has to inform the Assessing Officer about the fact of winding up of the company within thirty days of his appointment. Within three months of the receipt of notice from the liquidator, the Assessing Officer should inform the liquidator of the amount of tax payable by the company which he should set apart. On hearing from the Assessing officer, the liquidator is required to set apart that much amount of money. If the liquidator does not comply with the above requirements, or parts with the assets in contravention of section 178(3) or incurs expenses considered unreasonable by the Commissioner, he will be personally liable for the tax due from the company upto the amount notified by the Assessing Officer.

8.2 Where the Company cannot completely discharge its tax liability, the Assessing officer can request for an order for compulsory winding up the company. However, liquidation proceedings against a defaulting company should be initiated only after all available methods of recovery have been exhausted. Recourse should be taken to the provisions of Section 434(1)(9) of the Companies Act, 1956 only in the face of a continuing and consistent default. However, before issuing such a notice to the company, the Assessing Officer should obtain the prior approval of the Commissioner of Income tax.

8.3 In a case where a private company is wound up on or after 1st April, 1962, and it is found that any tax assessed on the company, whether before the commencement of the liquidation or in the course of or after the liquidation, cannot be recovered from the company, then, every person who was a Director of the company at any time, during the relevant previous years, is held jointly and severally responsible for the payment of the tax that cannot be so recovered. If a Director can show that the non-payment of tax by the company was not due to gross neglect on his part, he will be absolved. With effect from October 1, 1975, the Income-tax Act has imposed personal liability on the Directors of a private company in respect of any tax payable by the company even in cases where the company has not gone into liquidation. When a private company turns public but the tax in relation to company when it was private limited cannot be recovered, the Directors of the company, when it was private, would be liable for the outstanding tax.

9. Liability of the official assignee for payment of Income tax demand

9.1 In case the assessee is declared insolvent and the demand is pending against him, the Assessing officer should file the claim against the estate of the assessee before the Official Assignee. Where the person has been declared insolvent and the income or profits have been received by the Official Assignee after this date, the latter will, in effect, be the assessee and all notices can be served upon him. In such cases, he will pay taxes out of the estate of the assessee in so far as the assets lying in his hands are sufficient to meet the demand. In cases where the Official Assignee carries on business, he becomes, the successor u/s 170.

9.2 When a person is declared insolvent after he receives the income but before the assessment is completed or the return is filed, all notices should be served on such person.

9.3 If a Court Receiver has been appointed to administer the defaulter's estate, the claim should be made upon him with all the necessary details.

10. Certain transfers to be void for recovery proceedings

10.1 U/s 281, transfers effected by an assessee during the pendency of any proceedings under the Act with an intention to defraud the revenue are regarded as void as against any claim in respect of any tax or any other sum payable by the assessee as a result of completion of such proceedings. This provision is applicable in cases where the assessee creates a charge on any of his assets or parts with them by way of sale, mortgage, exchange or any other mode of transfer. Bonafide purchasers for adequate consideration and without notice are, however, protected against the operation of this section. With effect from 1.10.1975, the scope of this section has been enlarged. Now the creation of any charge or transfer of assets made not only during the pendency of proceedings but also after the completion thereof but before the service of notice by the Tax Recovery Officer under Rule 2 of the Second Schedule will be void. The Department would no longer be under any obligation to prove that the charge was created or the transfer was made with the intention to defraud the revenue.

Notes:-

- i. Assets covered by the provisions of the new sections have been defined to mean land, building, machinery, plant, shares, securities and fixed deposits in banks, to the extent to which they do not form part of the stock-in-trade of the business of the assessee.
- ii. The charge of the transfer shall not be void if made for adequate consideration and without notice of pendency of such proceedings or as the case may be without notice of such tax or other sum being payable by the assessee. If the charge is created or the transfer is made with the previous permission of the Assessing Officer, it will not be void.
- iii. The provision will apply only if the amount of tax or other sum payable or likely to be payable exceeds Rs.5,000/- and the assets charged or transferred exceed Rs.10,000/- in value.

11. Provisional attachment to protect revenue in certain cases (Sec. 281-B)

11.1 To protect the interest of revenue, during the pendency of any proceeding for the assessment or reassessment, the Assessing Officer is empowered to make a provisional attachment of any property of the assessee (even though there is no demand outstanding against the assessee). In order to invoke this provision, the Assessing Officer should be of the opinion that it is necessary to do so. The order of the provisional attachment will be made u/s 281-B. It is to be made only after obtaining the approval of the Commissioner of Income-tax. Such provisional attachment will ordinarily cease to have effect after the six months. In appropriate cases, however, the Commissioner may for reasons to be recorded by him in writing, may extend this period from time to time. However, the total period of such extension shall not, exceed two years. In a case where an application for settlement is made u/s 245C, the period between the date on which such application is made and the date on which the order is made u/s 245D(1) shall be excluded from the period specified above.

12. Punishment for willful attempt to evade the payment of tax

12.1 The Assessing Officer should, initiate prosecution proceedings in cases where he has reason to believe that the assessee is attempting willfully to evade the payment of taxes. Section 276 C (2) of I.T. Act covers cases of willful attempt to evade the payment of taxes, penalty or interest. Punishment for such willful attempt is, rigorous imprisonment for a

period of not less than three months which may extend to three years, and at the discretion of the court, fine also.

13. Recovery of taxes - persons leaving India - Tax Clearance Certificate

13.1 Section 230(1) of the Income tax Act, 1961, inter-alia, provides that no person, who is not domiciled in India, or who, even if domiciled in India, at the time of his departure has, in the opinion of an income-tax authority, no intention of returning to India, shall leave the territory of India by land, sea or air unless he obtains from the competent authority, a tax clearance certificate (in Form No. 33) stating that he has no liabilities outstanding under the Income tax Act and other allied acts or that he has made satisfactory arrangements for the payment of the taxes due from him. However, if the competent authority is satisfied that such a person intends to return to India, he may, under the proviso to Section 230(1) issue an exemption certificate (in Form No.34) in respect of all journeys to be undertaken by that person within the period specified in that certificate.

13.2 Such certificates may be issued only in absolutely genuine cases. All outstanding taxes should have been paid. Alternatively, he should either furnish a suitable guarantee or possess adequate assets which can be proceeded against for recovery of tax demands which may have become payable.

13.3 The Assessing Officers should, invariably, complete up-to-date assessments as provided for u/s 174. He should insist upon the payment of taxes before granting a tax clearance certificate u/s 230. Where even after completing the assessments up-to-date and realising the taxes thereon, further tax liabilities are likely to arise, on account of any pending enquiries etc. a necessary guarantee bond, as provided in Instruction No. 31/69 dated the 31st March, 1969, should be insisted upon. The guarantee form has to be accepted by the Commissioner of Income-tax for and on behalf of the President of India.

13.4 In exceptional cases, where it is not possible to complete enquiries and sufficient security is forthcoming to safeguard the interests of revenue, up-to-date assessments may be deferred. In such cases too, efforts should be made to complete the assessments as early as possible and recover the tax from the guarantor or from out of the assessee's assets, as the case may be.

13.5 Where a person (hereinafter referred to as the 'Guarantor') has stood guarantee for the payment of taxes of another person (hereinafter referred to as the 'principal debtor') and the guarantee has been given in the form referred to above, the procedure for the recovery of the taxes from the guarantor will be as follows :-

- i. The Assessing Officer should inform the guarantor in writing the tax liability of the 'principal debtor' for whom the 'guarantor' had stood guarantee and ask the guarantor to make the payment in terms of the guarantee bond. If the guarantor defaults action as stipulated under the Second Schedule and in para 7 of the guarantee bond can be initiated.
- ii. Where the guarantor does not make the payment, the Assessing Officer should start proceedings under the Second Schedule as if the guarantor was the defaulter and the Tax Recovery Officer should take coercive measures to recover the amount from the guarantor. In doing so, the Tax Recovery Officer would be acting in the discharge of his duties and in terms of para 7 of the guarantee bond executed by the guarantor.

13.6 In appropriate cases, where the employee/Director of the company has to proceed out of India on business at short notice, the Assessing Officer may accept the guarantee furnished u/s 230 with the seal of the company, provided it has been executed by a person duly authorised in this behalf, by the Articles of Association. He may also accept a power of attorney or any other suitable document.

13.7 The guarantee should be in operation till the party's return to India and for a period of three months thereafter. It should be subject to the condition that the individual remains in India for the said period of three months and that the company gives prompt notice to the Assessing Officer of the party's return to India. The Assessing Officer dealing with the cases of such individuals should be alert and he should ensure that no delay is allowed to take place in recovering the taxes from them after their return to India.

14. Levy of interest under section 220(2)

14.1 If the amount specified in any notice of demand is not paid before the specified date, the assessee shall be liable to pay interest for the period between that date and the date of payment.

14.2 According to the Board's Instruction No. 1883 dated 7-6-1991, the Assessing Officer is required to calculate the interest under section 220(2) at the end of each financial year on the outstanding demand. He should issue a notice of demand before the 30th day of April next following. Wherever the outstanding demand is paid, interest due is to be calculated and charged within a week from the date of payment. The CIT / Addl. or JCIT should carry out an yearly review of the work of the Assessing Officer in this regard and send a report to the CCIT/CIT.

14.3 Where the regular demand in respect of which interest has been charged is reduced subsequently as a result of orders under section 154/155/250/254/260/264 or section 245D(4), interest charged is also to be proportionately reduced, and excess interest paid, if any, is to be refunded to the assessee.

14.4 Interest under section 220(2) will be computed with reference to the due date reckoned from the date of original demand notice and the tax finally determined. The fact that during the intervening period there was no tax payable by the assessee under any specific order, would make no difference to this position, vide section 3(2) of Taxation Laws (Continuation & Validation of Recovery Proceedings) Act, 1964 and CBDT circular No.334 dated 3-4-1982.

14.5 Rates at which interest is chargeable under section 220(2) for the different periods are as under:-

| | |
|------------------------|------------|
| Upto 31-3-1965 | 4% p.a. |
| 1-4-1965 to 30-9-1967 | 6% p.a. |
| 1-10-1967 to 31-3-1972 | 9% p.a. |
| 1-4-1972 to 30-9-1984 | 12% p.a. |
| 1-10-1984 to 31-3-1989 | 15% p.a. |
| 1-4-1989 to 31-5-2001 | 1.5 % p.m. |
| 1-6-2001 onwards | 1.25% p.m. |

14.6 As per rule 119A a fraction of a month shall be deemed to be a full month for the purpose of levy of interest under section 220(2). The amount on which interest is to be calculated shall be rounded off to the nearest multiple of one hundred rupees and for this purpose, any fraction of one hundred rupees shall be ignored.

15. Demand and collection register

15.1 This is one of the key registers maintained in the Income-tax Office. It is normally maintained wardwise for recording entries of one financial year. As the name of the register indicates, it records all particulars of demand and collections for a financial year. Separate registers are maintained for company and non-company cases.

15.2 Whenever the Assessing Officer passes any order relating to assessment, penalty etc., full particulars thereof, such as the assessee's name, address, assessment year, total income, amount of tax, penalty, amount of refund, details of adjustment of pre-assessment tax collections, date of order, etc. are noted in this register. Date of service of demand notice is also noted in this register to keep watch over tax collections. Particulars of collections made are noted in this register when challans are received. Interest charged and interest payable to the assessee are also noted. Any variations in demand or refund as a result of rectification, appeal revision etc. are again duly recorded in this register.

15.3 CBDT instruction in F. No. 385/85/78-IT(B) dated 13.09.1982 prescribed a new format for the Demand and Collection Register and introduced Arrear Carry Forward Register.

15.4 The revised format bears a new look with redundant columns deleted and new columns added to bring the register in tune with the information needs of the Department. The salient features of the format are as under : -

15.4.1 In the revised D & CR, the column 'demand' will represent the gross demand without reducing the tax deducted at source. The aggregate of all taxes paid before assessment viz. tax deducted at source, advance - tax, self - assessment tax, etc. and any other payment made prior to assessment will be entered in the column 'pre-paid taxes'.

15.4.2 The column "Demand" and "Pre-paid taxes" will include the totals of Income tax and surcharge. However, the column 'Net Demand / Refund Payable' provides for separate sub-columns to indicate its break up into 'Income-tax' and 'Surcharge' to facilitate correct classification of net demand being given in the challan/refund voucher.

15.4.3 All entries of demand and collections of Income-tax, interest, penalties, etc. on companies will be made in a separate portion of the D & CR. This facilitates compilation of statistics regarding income-tax, interest, penalties, etc. on companies.

15.4.4 The revised format of the D & CR contains columns at appropriate places for full signatures of the TA/ Sr.TA making the relevant entry. This will help in fixing responsibility in case of wrong entries. Further, on the first page of the register, the full name, the designation and the specimen signature as well as the initials of all the officials handling the register at any point of time during the period of its maintenance will be recorded.

15.4.5 To ensure compliance with existing instructions that all refunds are required to be entered in the D & CR, relevant columns in the revised D & CR have been so worded as to remind the staff that entries regarding refunds have also to be made at appropriate place.

15.5 A record of the particulars of the officials responsible for posting and checking of collection entries should be kept on the first or second page of the D & C Register in the format as given in Annexure-VIII.

15.6 The D & CR is the first register which the Addl. CIT / JCIT calls for scrutiny on inspection. This register is useful to the Addl. CIT / JCIT in checking the quantity and quality of the AO's work and in judging the manner in which the AO is carrying on his duties of assessment and collection. The Addl. CIT / JCIT can ascertain the progress of assessment work, steps being taken to promptly collect the demands, the nature of AOs control over the staff in respect of issue and service of the demand notice, refund vouchers, giving effect to appeal orders etc., and his performance in respect of disposal of assessments and collection of demands compares vis-a-vis the targets set for him.

16. Arrear demand and collection register (ADCR)

16.1 Under the new scheme, a single register is maintained for a period of 3 years. In other words, a new ADCR has to be started every fourth year. As per this scheme which was introduced from 1-4-1983, the register started in 1983-84 was in operation during 1983-84, 1984-85 and 1985-86 and a new register started in 1986-87 which remained in use during 1986-87, 1987-88 and 1988-89. In this process, a new Register should have been opened in 2001-02 and it will be in use till 2003-04.

16.2 The format of the register consists of four adjacent portions. The first portion contains columns for recording details of the defaulter such as PAN, assessment year, name, address, status, etc. The remaining three portions -- one for each of the 3 years for which it will be maintained, are meant to record brought forward demands at the beginning of the year and collections during the year.

16.3 While carrying over the un-realised demands from the current D & CR to the Arrear D & CR at the beginning of next financial year and carrying forward of un-realised arrear entries of earlier years, care should be taken to arrange the arrear entries according to the financial year in which the arrear demands were raised. This is to ensure that the year wise break up of arrear demand at the end of any year is easily ascertainable.

16.4 Each page of the ADCR is numbered. A certificate in the register also records the total number of pages under the AO's signature.

16.5 While entering the demand, it should be ensured that the name, address, PAN etc. of the assessee have been correctly and fully shown in the respective columns. Overwriting of figures should be avoided. Any correction should be initialed by the AO. The entries in the different parts of the register are made monthwise. At the end of each month, monthly and progressive totals are struck. The entries made in the register, at least in respect of cases where the demand exceeds one lakh rupees, should be checked by the Assessing Officer every month to ensure their correctness.

16.6 As mentioned in para 16.2, the new format of the ADCR has three portions. By 15th May of every year the demands remaining uncollected in the first portion are brought forward to the second portion of the ADCR. While carrying forward these demands, interest u/s 220(2) should be charged in all cases and shown in the second portion. According to Board's instructions, carry forward of arrear demand should be done by Inspectors/ Office Superintendents in company / central/ scrutiny ward; and by Sr. TA/TA in other wards. Such official has to append a certificate on the 1st page of ADCR that all the entries of arrear demand have been duly carried over by him from the earlier register. He should write his full name and affix his signature. The job should be completed by 15th May. Thereafter, verification / reconciliation of arrear demand will be taken up by a reconciliation squad headed by Office Superintendent. The Joint Commissioner/Additional Commissioner will constitute such a squad from the staff working in his range. The squad will verify that all the arrear demands have been correctly brought forward and the Office Superintendent of the squad will sign the certificate of authenticity and reconciliation, a copy of which will be appended to the ADCR. The work of verification should be completed by 15th June. The AO should test check and initial 5% of the entries of arrear demand carried over to ensure correctness (as the overall responsibility lies with him). He will then send a certificate to Addl. CIT / JCIT by 30th June that the work of carry forward of arrear demand is over. (The C.I.T., on his part, will send a certificate to the Board by 31st July each year.)

16.7 It is essential that the names of the assesses are arranged in alphabetical order under each financial year in which the demand was raised. This would facilitate the preparation of arrear sheets.

17. Reports on outstanding arrears of tax

17.1 As a mechanism for monitoring cases with huge arrears, the Assessing Officers are to send quarterly dossiers in respect of cases with arrears exceeding rupees ten lakhs. Dossiers in cases with arrears ranging between 10 lakhs and 1 crore are to be sent to the CCIT. Such reports in cases where arrears exceed rupees one crore are required to be sent to the Directorate of Recovery / CBDT. While reviewing and forwarding the dossier reports, the CCIT/CIT issues directions to the Assessing Officers or the Tax Recovery Officers as the case may be, suggesting further steps required to be taken by them for effecting recovery of the outstanding arrears. The AO/TRO is to execute these instructions during the next quarter and report compliance and results while sending the subsequent report (Annexure-IX).

18. Computerisation of collection work

18.1 Giving credit to taxes paid: Now the processing of challans, all over the country has been computerised. All the challans for taxes paid by tax payers go to the CTUs and to the Regional Computer Centres (RCC). The challans are processed using a uniform software called Tax Accounting System (TAS). Every month after processing such challans, Daily Collection Registers are generated at the Regional Computer Centres for every Assessing Officer, or for a range depending on jurisdiction. This is the primary register with reference to which the Assessing Officers can watch collections and also proceed to take recovery whenever necessary. Wherever the computers with the Assessing Officers are networked with the RCC, the Assessing Officers can also check payment of taxes in individual cases on their own computer using ITD Applications through specific queries.

18.2 Individual Running Ledger Account (IRLA) : IRLA is an on-line, windows based, menu driven integrated software that forms part of the comprehensive package called ITD Applications. Under IRLA the users will be able to perform screen based functions and navigate across screens using Graphical User Interface (GUI). The screens are user friendly and, self- explanatory. They can be used to perform different functions like data-entry, query execution, report initiation, etc.,.

18.2.1 Objective of IRLA : The primary objective of IRLA is to generate a comprehensive individual running ledger for each assessee. This ledger lists all demands, collections and refunds relating to an assessee. IRLA depends on other modules like Assessment Information System (AST), Tax Accounting System (TAS) and TDS accounting system (TDS) for creating the entries of demands, collections and refunds in the Ledger. The IRLA Ledger will maintain the details of all the transactions that have taken place from the date of computerisation of the jurisdiction. Obviously the transactions which took place before the date of computerisation cannot be ignored as they may affect the future transactions and reports. Hence, IRLA provides the facility to import the net demands pending as on the date of computerisation.

18.2.2 Scope of IRLA : The overall capability of the Individual Running Ledger Account System is as under the IRLA can:-

- i. Import old arrears and link them with new PANs that have been allotted to the concerned assessees.
- ii. Maintain current status of demands, collections and refunds.
- iii. Grant and vacation of stay and instalments on a demand and its subsequent monitoring.
- iv. Allow write off of irrecoverable demands.
- v. Monitor defaults - on account of tax on regular assessment and advance tax.
- vi. Maintain interest u/s 220(2).
- vii. Provide a computerised Ledger showing PAN-wise, assessment year - wise and date - wise record of transactions.
- viii. Generate reports and provide on- line queries on assessee data.

18.2.3 Data base of demand, collection and refund : IRLA maintains the complete history of the demands generated by the Assessment Information System (AST). The particulars of variation of the demands, over a period of time, due to various appeal effects, rectification and revisions are reflected through the Ledger. Penalty demands are also similarly treated. Likewise the data on interest u/s 220(2) is generated with a modification. Since there will be only one record entered in respect of interest u/s 220(2), it will be updated during any change.

18.2.4 The brief particulars of the collections from the assessee as provided by the TAS are stored in the Ledger. Likewise, the TDS details will also be incorporated into IRLA.

18.2.5 Stay and instalments : IRLA allows the Assessing Officer to grant a stay on-demand either fully or partly . The assessee is, in that case, not treated as defaulter for the period of stay. After the expiry of stay, if the assessee does not pay, the system treats the

assessee as a defaulter. The stay granted by various authorities like the ITAT, Settlement Commission, High Court, Supreme Court etc. are also incorporated in the system.

18.2.6 The system allows flexibility for working out the instalments granted to an assessee by the Assessing Officer. The system treats the assessee as a defaulter if he fails to adhere to the instalment plan.

18.2.7 Interest u/s 220(2) :The system works out interest u/s 220(2) when a payment is made after the due date. Interest is also calculated by the AST and TAS Modules. The AO can calculate interest u/s 220(2), whenever required by law, and IRLA allows the AO to print the challan for payment.

18.2.8 Write off : IRLA module also allows the AO to write off an arrear demand which becomes irrecoverable. However, whenever any collection is made from the concerned assessee, the AO can mark the write off as 'non-active'.

18.2.9 Queries : IRLA supports flexible queries to meet user requirements. A comprehensive query is available to inquire on assessee details with special search features on transaction amounts and dates.

18.2.10 Reports : IRLA can generate the CAP Report (Monthly), Defaulters' list, advance tax defaulters list, PAN linked Report and Ledger statement. It can also generate various letters and notices like a stay letter, instalment letter, and demand notice u/s 221.

Annexure - I
(vide para 4.15.2)

The Income tax Officer
(Station)

Dear Sir,

The sum of Rs.....is due from us / me on account of tax for the yearas assessed by you. We/I have filed an appeal against this order of assessment to theand as we/I prayed for the say of realization of the amount due from us/me till the disposal of the appeal, we/I were/was ordered to give security for the payment of the amount due from us/me in case the appeal is dismissed. Therefore as a security for the amount of tax due from us/me, we/I have already deposited with you title deeds of property (as detailed in the schedule "A" given below) and with authority to be held till the amount of tax due from us/me is fully paid or satisfied. We/I request that the realization of amount of tax due from us/me be postponed till the disposal of the appeal.

Schedule "A"

| No. | Description | Estimate value | Remarks |
|--------|-------------|----------------|---------|
| 1..... | | | |
| 2..... | | | |

The above schedule is correct.

Yours faithfully,
Signature of assessee

Or

Written to AO.....by.....assessee.....as agreed upon in person we/I had delivered to you the under mentioned documents as Security.

Details of documents

| No. | Description | Estimated value | Remarks |
|-----|-------------|-----------------|---------|
| | | | |
| | | | |
| | | | |

Signature of assessee

Station
Dated.

Annexure - II
(vide para 4.15.4)

This Mortgage deed, made theday of Between A.B. Of etc., (hereafter called “the Mortgager”) of the one part, and C.D., of etc. (hereafter called Mortgagee) of the other part, witnesses, that in consideration of the sum of Rs.....due from A.B. on account of tax for the yearto C.D. The said A.B. does hereby mortgage, by way of simple mortgage, to the said C.D., his heirs, executors, administrators, assignees or successors in office, ALL THAT property specifically described in the schedule hereto annexed, by way of security for the payment of the said sum of Rs.....and interest thereon at the rate of Rs.....%p.a. AND THE MORTGAGER does hereby, agree that he will pay to the Mortgagee the principal sum aforesaid together with the interest then due, on theday of; AND THE Mortgager further agrees that, on his failure to pay the said amount of Rs.....with interest then due, on theday of , the Mortgagee, his heirs, executor, administrators, assignees or successors in office shall be entitled to cause the said mortgaged property to be sold and with the proceeds to satisfy his claim along with the expenses incurred for the sale of the mortgaged property; AND FURTHER should the claim be not then satisfied, the Mortgager does agree with the Mortgagee that he will pay the balance from his person and other property, and the Mortgagee, his heirs, executors, administrators, assignees or successors in office may recover the same from him, his heirs, executors, administrators or assignees. Provided always that the mortgager shall be entitled to redeem said mortgage at his option by paying of the amount due from him at any time before the saidday of.....

In witness thereof, the said A.B. Has hereto put his signature asthe day and year first above written.

Witness.

A.B.....

Annexure - III
(vide para 4.15.5)

In the matters of assessment offor the year-----. The security bond executed by A.B. Or Surety in favour of I.T.O..... on stay of realization of the amount of tax due fromwitnesseth: That the I.T.O.....by this order dated.....having assessedand the assessee having preferred an appeal from the said order tothe said appeal is still pending.

Now the Income-tax Department wants to realize the amount of tax due from the assessee, and the assessee has made an application praying for stay of realization of amount of tax due from him till the disposal of the appeal, he has been called upon to furnish security. Accordingly I, of my own free will, stand surety to the extent of Rs....., mortgaging the property specified in the Schedule hereunto annexed, and covenant that if the amount of the tax as assessed by the Income-tax Officer be confirmed or varied by the appellate authority the said assessee shall duly act in accordance with the order of the appellate authority and shall pay whatever may be payable by him thereunder and if he should fail therein, then any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives shall be personally liable to pay the balance and also my other property will be liable for the balance. To this effect I execute this security bond thisday of19.

Signed

Schedule

Witnessed by

- 1.
- 2.

Note : - This security bond should be on a non-judicial paper of the value of Rs.10.

Annexure - IV
(vide para 4.15.6)

The Memorandum of Agreement is made theday ofbetween A.B. Of etc., (Pledger), of the one part, and C.D. Of etc. (Pledgee), of the other part.

Whereas the sum of Rs.....is due from the said A.B. on account of tax for the year.....as assessed by the said C.D. and whereas the said A.B. has preferred an appeal against the order of assessment to theand has asked for stay of realization of the amount of tax due from him till the disposal of the appeal and the said assessee has been ordered to furnish security for the payment of the amount of tax due from him and consequently the said A.B. has deposited with the said C.D. the movables, mentioned in the schedule hereto..... Now it is hereby agreed between the parties hereto as follows : --

1. The said A.B. shall pay to the said C.D. the sum of Rs.....one month after the decision of the appeal.
2. The said C.D. shall retain the moveables deposited with him as aforesaid as a pledge for the payment of the said amount of tax due from him, and if default shall be made in payment of the said amount after one month of the disposal of the appeal, the said C.D. may, at any time thereafter sell the said moveables or any of them, by public auction or private contract and to resell or vary or contract for sale and to resell without being answerable for any loss arising thereby; and the said C.D. shall, with and out of the proceeds of such sale, in the first place, pay and retain all costs and expenses incurred by him or about any such sale or attempted sale or otherwise in relation to this security, and in the next place, pay and retain all moneys owing to him under this agreement, and shall pay the surplus (if any) to the said A.B.
3. The said C.D. shall be at liberty, if he thinks fit, to insure the said moveables or any of them, against loss or damage by fire or other accident and all money spent by him in or about such insurance shall on demand be repaid to him by the said A.B. with interest, thereon at 6% p.a. computed from the time of spending the same and the same shall also be payable out of proceeds of the sale of the said moveables in like manner as the said amount of Rs.....
4. The powers hereby conferred on the said C.D. shall be exercisable by his executors, administrators or successors in interest.

In witness whereof, the said A.B. has hereto signed atthe day and year first above written.

Witness

A.B.

Note : This agreement should be on a non-judicial stamp paper of the value as given in Article 6 of the Stamp Act involving the amount.

Annexure - V
(vide para 6.6.4 (d) (i))

From

.....

.....

Income-tax Officer

.....

.....

To

Shri/Messrs.....

.....

Dated.....

Sub : Payment of tax

Ref. : Permanent Account No. / G.I.R. No.

Sir/Madam/Gentlemen,

My records show that the following demands are outstanding in your case :

| S.No. | Asstt. Year | Amount | (Nature of demand Regular IT/WT/GT/Penalty;interest, Advance tax, etc., | Remarks : (Here mention if applicable, whether there has been any default in Instalments granted / agreed Upon) |
|-------|----------------|--------|---|---|
|-------|----------------|--------|---|---|

| | | | | |
|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|

TOTAL

You are requested to verify from your records the correctness of the above figures and intimate the correct position to Shri.....Inspector of Income-tax who is the bearer of this letter.

This is also to inform you that if the Inspector finds a part or whole of the above demand is still outstanding he has the authority to collect the same from you, as the Officer authorised by me under Schedule III to the Income-tax Act, 1961, and other relevant rules applicable to the said schedule.

Yours faithfully,

(.....)

Income-tax Officer

Seal of the I.T.O

Annexure - VI
(vide para 6.6.4 (d)(ii))

See order dated Issued under section 226(5) by the Commissioner of Income-tax (Recovery)

To

Shri
Inspector of Income-tax,

Sub : Recovery of tax from defaulter Shri.....
(full address)

Ref : P.A. No. :
G.I.R. No.

Whereas a sum of Rs..... As per details noted below is due from the above defaulter.

| S.No. | Asstt. Year | Nature of demand | Amount | Remarks, if any | Total |
|-------|-------------|------------------|--------|-----------------|-------|
|-------|-------------|------------------|--------|-----------------|-------|

And whereas the defaulter mentioned above has not paid this amount so far.

This is to direct you to serve a copy of this warrant on the said defaulter and unless after such service, the said defaulter pays forthwith the said sum of Rs..... Together with interest thereof under section 220(2) of the Income-tax Act, 1961, to proceed to attach the moveable property of the said defaulter and to hold the same until further orders from the undersigned.

Provided that should the moveable properties so attached consist of cash in the form of current coins and currency notes and the aggregate of such cash does not exceed the said amount due from the defaulter, the same shall be remitted to the Treasury in full/partial satisfaction of the tax due from the defaulter. In such a case a receipt shall be granted in the form as per APPENDIX VI/VII.

You are further required to return this warrant on or before Day of 20 with an endorsement certifying the day on which and the manner in which it has been executed, or the reason why it has not been executed.

Given under my hand and seal atthisday of20.....

Income Tax Officer

Annexure - VII
(vide para 6.6.4 (d)(iii))

RECEIPT

BOOK NO.
RECEIPT NO.

(ORIGINAL to be handed over to the tax payer)

D.C.R. No.....(1).....Income-tax Office.....Per A/C
No.....(2).....(3).....GIR
No.....(2).....
G.I.R.No..... DATED

Received from M/s. Shri.....(4)..... A sum of
Rs.....(Rupees.....) In cash/cheque
No.....dated..... On.....towards part/full payment of arrears of tax
due from M/s. Shri.....(5)..... for assessment
year(s).....(6).....
Signature of the payer.

Signature of the Income-tax
Inspector, with stamp and
Identity Card. No.....

Note:- This receipt should be exchanged with the Tax Payer's portion of the Bank /
Treasury challan at the Income-tax Office mentioned above.

Instructions for filling the receipt :

(To be printed in the inside front cover of the Receipt Book)

1. Here mention the D.C.R. No. With Page.....; e.g. If the demand is at entry 13 of page 19 of the Demand and Collection Register for 1972-73, the entry should be 13-19-72-73.
2. If Permanent Account No. is not given, mention the GIR No. If permanent Account No. is given in the cover portion, mention the Code for the Income-tax Officer having jurisdiction at the time when the Distraint Warrant was issued.
3. Here mention the designation and location (i.e. Name of town) of the Income-tax Officer having jurisdiction over the defaulter at the time of payment.
4. Here mention the name of the person who actually tendered the cash or from whom the cash was seized.
5. Here mention the name and full address of the defaulter / whose GIR No./Permanent Account No. has been mentioned earlier.
6. If more than one Assessment year is involved, mention all the assessment years involved.

Annexure - VIII
(vide para 15.5)

| Sl. No. | Full name of Officials | Nature of Job | Period of | Usual | |
|---------|---|------------------------|---|--|---|
| | Remarks Responsible for Entering / checking | entering / checking | posting on this work (give dates) | initials of persons mentioned in Col. 2 | |
| 1 | 2 | 3 | 4 | 5 | 6 |

Annexure - IX
(vide para 17.1)

DOSSIER REPORT FOR MONTH / QUARTER ENDING : _____
CCIT/DGIT REGION : _____
CIT CHARGE : _____

1. Name & Address of the assessee : -
2. (a) Status _____ (b) PAN / GIR No. _____
(c) Classification (Please tick relevant box)
 - i) Public Sector Undertaking
State _____
Central _____
 - ii) Bank
(a) Foreign _____
(b) Indian _____
 - iii) Financial Institution (other than banks) _____
 - iv) Foreign Co. (Other than Banks) _____
 - v) MNC _____
 - vi) Film Industry _____
 - vii) Search and Seizure Cases _____
3. Gross Demand : (a) At the beginning of the quarter and (amount in lacs)
(b) added during the quarter

| Asstt Year. | F.Y. in which raised | Tax | Penalty | Interest | Total |
|------------------------|----------------------|-----|---------|----------|-------|
| (a) | | | | | |
| (b) | | | | | |
| Aggregate gross demand | | | | | _____ |

4. (a) Demand Not Fallen Due _____
(b) Demand Under Verification

| Asstt. Year | Authority Granting Instalments | Total amount covered by Instalments | Amount of each Instalment and its duration |
|-------------|--------------------------------|-------------------------------------|--|
| _____ | | | |
| _____ | | | |

(c) Demand covered by Instalments (Out of 3)

| Asstt. Year | Amount | Date of Payments as per assessee |
|-------------|--------|----------------------------------|
|-------------|--------|----------------------------------|

(d) Demand covered by Stay (out of 3)

| Asstt. Year | Authority granting stay | Total amount covered by stay | Date upto which Stay granted |
|-------------|-------------------------|------------------------------|------------------------------|
|-------------|-------------------------|------------------------------|------------------------------|

| 5. | Demand disputed | A.Y. | Amount | Date of application Appeal with No. | Date of Order |
|----|-----------------|------|--------|-------------------------------------|---------------|
|----|-----------------|------|--------|-------------------------------------|---------------|

- (i) Rectification
- (ii) Revision
- (iii) Before CIT(A)
- (iv) Before ITAT
- (v) Before High Court/
Supreme Court
- (vi) Before Settlement
Commission
- (vii) Covered by petitions
for waiver of
interest /penalty

TOTAL DEMAND DISPUTED

6. Demand Difficult to Recover :

- (i) Pending write off
- (ii) Company in liquidation
- (iii) Insolvency proceedings
- (iv) No assets for recovery
- (v) Protective Assessments
(Give details)
- (vi) Co. before BIFR
- (vii) Assessee or Representative
not traceable

TOTAL DEMAND DIFFICULT TO
RECOVER (6(i) TO 6(vii))

7. UNREALIZABLE & UNCOLLECTIBLE
DEMAND (4 + 6)

- Note : i. Demands not stayed can be collected
 ii. Demands covered by Board's circular No. 1914, if not stayed, to be collected.
 iii. The total amount covered by stay / instalments to reflect the amount outstanding as at the end of the quarter.

8. NOT REALISABLE DEMAND (3-7) _____

9. Cash Collection / Reduction Asstt. Year Asstt. Year Asstt. Year

(a) Cash Collection _____
 (b) Reduction in appeal _____
 (c) Reduction u/s 154/264/Waiver _____

| | Collection | Reduction |
|---|------------|-----------|
| Total cash collection and reduction during the quarter | _____ | _____ |
| 10 Total cash collection and reduction upto the quarter (end) | _____ | _____ |
| 11 Net demand at the end of the quarter (3-9) | _____ | _____ |
| 12 Balance collectible demand at the end of quarter (8-9) | _____ | _____ |

- (i) Date of drawing up of statement of Arrears by TRO on his own or on request
 (ii) Cash collection by TRO during the quarter
 (Give Asstt. Year wise details)

13. If it is a search case

- (a) Date of search
 (b) Value of assets seized (i) Cash
 (ii) Others
 (c) Value of assets adjusted

14. Nature of major additions

15. Brief reasons for non collection of demand in item 12 above

16. Action taken on Directions given by higher officers in earlier quarters

Date : _____ Name and Designation of the Assessing Officer

17. Comments of the Additional Commissioner / Commissioner of Income-tax

SUMMARY SHEET

Name of the Assessee :

(Rs. in lacs)

| Sl. No. | | Qr. Ending 30-06 | Qr. Ending 30-09 | Qr. Ending 31-12 | Qr. Ending 31-03 |
|---------|---------------------------------------|---------------------|---------------------|---------------------|---------------------|
| 1 | Net Demand outstanding | | | | |
| 2 | Demand difficult to collection | | | | |
| | a. Pending write off | | | | |
| | b. Assessee/ Directors not traceable | | | | |
| | c. Notified persons | | | | |
| | d. Cases before BIFR | | | | |
| | e. Company in liquidation | | | | |
| | f. Cases before settlement commission | | | | |
| | g. Others | | | | |
| 3 | Disputed before SC/HC | | | | |
| 4 | Disputed before ITAT | | | | |
| 5 | Disputed before CIT(A) | | | | |
| 6 | Disputed in Recti./ Revision /Waiver | | | | |
| 7 | Others | | | | |
| 8 | Remarks | | | | |

Chapter- 11

REFUNDS

1.1 REFUND means "to repay" or "restore what was taken". Under the income tax and other direct taxes laws, refunds arise in those cases where the amount of tax paid by a person or on his behalf is greater than the amount with which he is properly chargeable to tax.

1.2 Section 237 of the Income-tax Act, 1961 provides that, if any person satisfies the Assessing Officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of the excess.

1.3 Section 240, of the Income-tax Act, 1961 provides, that 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, except in the case of :-

- 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.

1.4 There are several circumstances under which refunds may become due under the Income-tax Act, For example :-

- a. the tax deducted at source from salary, interest on securities or debentures, or any other payment is higher than the amount of tax payable, as determined on processing the return u/s 143(1)(a) of Income-tax Act or on regular assessment;
- b. the amount of advance tax paid u/s 210 of Income-tax Act, exceeds the tax payable as determined while processing the return u/s 143(1)(a);
- c. the tax originally determined and paid on the basis of determination of income u/s 143(1)(a) of the Income-tax Act, 1961 or regular assessment gets reduced as a result of rectification of a mistake apparent from the record u/s 154 or through an appellate order u/s 251 or 254 through a revisionary order u/s 264 of the Income-tax Act;
- d. the same income is taxed both in India and in a foreign country with which Govt. of India has not entered into an agreement for avoidance of double taxation;
- e. relief under section 89 of the Act;
- f. excess or wrong tax deducted at source;
- g. where the amount of tax treated as paid by a person or on his behalf for any assessment year exceeds the amount with which he is properly chargeable under the Act for that year. (Example: taxes deducted at source - Please see section 199 of the Income-tax Act, 1961).

1.5 Section 240 of the Income-tax Act, 1961 enables the Assessing Officer to refund in respect of in the cases mentioned at (a) to (c) above. In the remaining cases, the assessee is

required to furnish the necessary details to the satisfaction of the Assessing Officer along with the return of income/refund claim.

1.6 In respect of other direct taxes like wealth tax, or interest tax, refunds usually result from reduction in liability through appeal, revision or rectification orders.

2. Interest on delayed refund

2.1 The assessee is entitled for interest on refund granted to him in the following circumstances.

2.2 For and upto Assessment Year 1988-1989.

- i. After three months from the end of the month in which the total income is determined if the total income does not solely consist of interest on securities or dividends (Sec. 243(1)(a)).
- ii. After three months from the end of the month in which the claim for refund is made. (Sec. 243(1)(b)).
- iii. After three months from the end of the month in which any order is passed in appeal or other proceedings under the Act (Sec. 244(1)) resulting in the refund.
- iv. After one month from the date of the order passed in appeal or other proceedings resulting in refund of any sum paid in pursuance of any order of assessment or penalty (Sec. 244(1A)).

2.3 For Assessment Year 1989-1990 and onward.

- i. Where the refund arises on account of tax deducted at source or tax, collected at source or advance tax and such refund is in excess of 10% of the tax determined, from the 1st day of April of the assessment year to the date on which the refund is granted.
- ii. Where the refund arises on account of tax paid in pursuance of a notice of demand under section 156, for every month comprising the period from the date of payment to the date on which the refund is granted.

2.4 The following are the rates of interest payable u/s 244 and 244A of the income-tax act.

| from date | int u/s. 244 | int u/s. 244A |
|------------|--------------|---------------|
| 01.04.1962 | 4% p.a. | - |
| 01.04.1965 | 6% p.a. | - |
| 01.10.1967 | 9% p.a. | - |
| 01.04.1972 | 12% p.a. | - |
| 01.10.1984 | 15% p.a. | - |
| 01.04.1989 | | 15% p.a. |
| 01.06.2001 | | 12% p.a. |
| 01.06.2002 | | 8% p.a. |

2.5 Section 244A(2) and the explanation to Section 243(1) of the Act stipulate that if the delay in granting the refund within the period of three months is due to the assessee, whether wholly or partly, the period of delay attributable to him will be excluded by the Assessing Officer from the period for which interest is payable. In cases of dispute as to the period to be excluded for the purpose of calculation of interest, the question is referred to the Chief

Commissioner or the Commissioner of Income-tax whose decision is final as provided u/s. 243(2) and 244A(2) of the Act.

2.6 Where as a result of any subsequent order if the refund on which the interest is granted gets increased or decreased, the interest shall be increased or decreased accordingly (Sec. 244A(3)).

3. Refunds under Section 237 of the Act

3.1 Refunds on account of excess deduction of tax at source under Section 192 to 195 of the Act are allowed under Section 237 of the Income tax Act. Under this Section if the amount of tax actually paid by the assessee or on his behalf or treated as paid on his behalf for any assessment year exceeds the amount with which he is properly chargeable under the Act for that year, he is entitled to a refund of the excess amount so paid on an application being made by him, in Form No. 30 and verified in the prescribed manner. (Rule 41). A register has to be maintained as per Annexure - I.

Note: -

i. Where any person makes an application for refund under Section 237 of the Act to the Assessing officer and on scrutiny of the evidence produced by the claimant the Assessing officer finds that there will be a demand and not a refund, the Assessing officer should pass an order refusing the refund. A written order is necessary as an appeal lies against such refusal of refund.

ii. At the places where exclusive refund circles / wards are functioning, the Assessing Officer should send a copy of his order (of refusal of refund) to the concerned Assessing Officer having territorial jurisdiction over such cases. The latter should then issue a notice under section 139(2)/148 of the Act as the case may be.

4. Procedure for application for refund

4.1 The provisions of section 239(1) and 239(2)(c) read with Rule 41 of the Act provides that in cases of excess tax deduction at source, the claimant (who may be referred to as "the assessee"), has to apply for refund in the prescribed form (Form No. 30). The assessee has also to make the necessary verification in the prescribed manner. The claim has to be made within one year from the end of the assessment year to which the claim relates. For example refund claims for assessment year 2001-2002 must be filed on or before 31st March, 2003.

4.2 In other cases, no formal application for refund is required, where refunds arise on processing of a return u/s 143(1)(a) of the Act. on account of excess deduction or collection of tax at source or excess payment of advance tax or tax on self assessment. Similarly no application is required where they result from reduction of total income in appeal, revision or rectification. The Assessing Officer shall grant such refunds on his own, as and when they arise.

4.3 Supplementary claim of refund : It may often happen that a taxpayer is not able to attach some TDS certificates along with his return of income for the reason of non-receipt of the certificates at the time of filing of his return of income. Section 155 (14) of the Income-tax Act, introduced with effect from 1st June, 2002, allows the taxpayer an opportunity to file a supplementary claim for refund in such situations. However, the following two conditions would be required to be fulfilled in this regard:-

- i. the application for rectification supporting the claim for such TDS credit must be made within two years from the end of the relevant assessment year to which the TDS pertains, along with the attachment of the relevant TDS certificates.
- ii. The income from which such TDS has been made should have been disclosed in the return of income for the relevant assessment year.

5. Condonation of delay in claiming refund

5.1 Under section 119(2)(b) of the Act, the Board has prescribed a procedure for condonation of delay for belated claims of refunds in Circular No.670 dated 26.10.1993. According to these instructions, CIT has the power to condone delays in cases of genuine hardship of refund claims upto Rs.10,000 and CCIT upto Rs.1,00,000. The power of condonation in cases of refund claims of more than Rs.1,00,000 as well as power of rejection in all cases lies with the Board

5.2 In Circular No. 670 dated 26.10.1993, the following further conditions should be fulfilled:-

- i. The refund should arise as a consequence of excess tax deducted or collected at source, and payments of advance tax, under Chapter XVII-B, XVII-BB and XVII-C respectively. The amount of refund should not exceed Rs.1 lakh for any assessment year;
- ii. The refund claimed should not be supplementary in nature, i.e., claims for additional amount of refund should not have been made after the completion of the original assessment for the same assessment year;
- iii. The income of the assessee should not be assessable in the hands of any other person under any of the provisions of the Act; and
- iv. The returned loss, if any, should not be carried forward from an earlier year.

By its Circular No. 8/2001 dated 16.05.2001, the Board has further clarified that the delay in making the refund claim as well as the claim of carry forward of losses can be condoned in cases where returned income is a loss, provided certain other conditions are satisfied :-

- i. the refund arises as a result of excess tax deducted at source, collected at source and payments of advance tax under the provisions of Chapter XVII-B, XVII-BB and XVII-C respectively and the amount of refund does not exceed Rs.1 lakh for any assessment year.
- ii. the returned income is not a loss where the assessee claims the benefit of carry forward of the loss;
- iii. the refund claimed is not supplementary in nature, i.e., claim for additional amount of refund is made after the completion of the original assessment for the same assessment year, and
- iv. the income of the assessee is not assessable in the hands of any other person under any of the provisions of the Act.

6. Refund of tax deducted at source to the deductor

6.1 Tax has to be deducted at source by persons responsible for making payments in accordance with section 192 to 194L and 195 of the Act. While Sections 192 to 194L are applicable to certain specific payments to residents, Sec. 195 is applicable only in respect of payments to non-residents. There may be instances of excess tax having been deducted by the deductor, due to various reasons. Normally, in such cases, the person from whom the tax has been deducted has to claim the refund by filing a return of income. However, the Board's

Circular No.285 dated 21.10.1980 permits the deductor to claim a refund. This aspect is not covered in the regular assessment / refund proceedings dealt in the Act. The Assessing Officer before whom the deductor is required to make the claim is the one in whose jurisdiction he is submitting his quarterly statements and the annual return of tax deducted at source.

6.2 In such cases the Assessing Officer has to ensure that the refund is correctly arrived at and that a certificate under Sec. 203 has been issued by the deductor, excluding the refund of TDS claimed before him. Further the particulars of adjustment / refund should be indicated in the quarterly / annual return. The difference between the tax deducted at source and the tax actually deductible on such payments has to be arrived at. Such amount should be first adjusted against the existing tax liability of the deductor under any of the direct tax acts. After meeting such liability, the balance amount, if any, should be refunded to the deductor.

6.3 Procedure for refund of tax deducted at source under section 195 of the Act is indicated in Circular No.790 dated 20.04.2002. This revokes earlier instructions on the subject. This amount can be refunded only with prior approval of the Chief Commissioner of Income-tax concerned. The refund in respect of tax deducted at source under section 195 of the Act can be claimed only within two years from the end of the financial year in which such tax is deducted.

6.4 This procedure is independent of the other provisions of the Income-tax Act, 1961. A return of income and a claim under Section 230 or 237 of the Act are not required. They need not therefore be insisted upon. Such refunds are not entitled for interest under section 244/244A of the Income-tax Act. For issue of this refund, the Assessing Officer should use the same regular refund order voucher as he uses for issuing other income tax refunds. He should also follow the instructions specifying the approvals necessary and the checking required for issue of other refunds. The amount refunded would be debitabe under the sub-head "Other Funds" below the minor head "Income-tax on Companies" - major head "020-Corporation tax" or below the minor head "Income-tax other than Union emoluments" major head "021-Taxes on incomes other than Corporation tax" depending upon whether the payment was originally credited to the major head "020-Corporation tax" or to the major head "021-Taxes on income other than Corporation tax". Since the adjustment / refund of the amount paid would arise in relation to the deduction of tax at source, the recording of the particulars of adjustment / refund, should be done in the quarterly statement of TDS / annual return under the signature of the Assessing Officer at the end of the statement i.e. below the signature of the person furnishing the statement.

7. Mode of granting refund

7.1 Refunds are allowed by issue of refund vouchers encashable at the State Bank of India or the Reserve Bank of India.

7.2 Section 245 of the Act empowers the Assessing Officer to set off the refund due to the assessee for one year against the tax arrears for any other year after giving an intimation in writing to such person of the action for adjustment. Adjustment refund orders are to be prepared in favour of the Income-tax department and sent to the State Bank of India or the Reserve Bank of India, concerned along with the challan prepared in respect of the demand pending collection.

8. Who should apply for a refund?

8.1 Ordinarily, refund is to be claimed by the person who has made excess payment of tax. However, as per provisions of section 238(1) of the Act, where the income of a person is included in the hands of another, only the latter will be entitled to apply for refund. Thus, a minor child whose income is clubbed with that of the father or the mother, is not entitled to any refund in respect of that income. If a refund is due in such a case, it should be claimed by the father, or the mother, as the case may be. Again, where a person is unable to claim the refund himself due to incapacity or death, his legal heir or representative may make the necessary application. Under section 238(2) of the Act, similar applications can be made by the trustee or receiver in case of insolvency, or the liquidator in case of a company under liquidation. If an agent wishes to claim refund on behalf of a non resident person, he will be required to show that he has been duly authorised, in proper legal form, to do so, so that his act will bind the non-resident on whose behalf he claims refund.

9. Where to apply for refund ?

9.1 As a rule, claims for refund should be preferred before the Assessing Officer having jurisdiction over the area in which the assessee resides or carries on his business. But at places where there are exclusive circles/wards functioning to deal with direct refund cases, the assessee has to file the required form with such officer as indicated in Section 239 read with section 237 of the Act.

10. Procedure to be followed while granting refunds

10.1 The responsibility of granting refund is on the Assessing Officer alone and it will be a part of the duty of the Inspecting Officer to see that the rules have been properly observed.

10.2 The onus of proving the claim to refund and of adducing satisfactory evidence of his total income lies on the claimant. If he fails to discharge it, his claim is liable to be rejected.

10.3 As soon as a refund application is received, the record keeper should consult the PAN Register. In case the name of the refundee is not already borne on the PAN (GI) Register, appropriate entries should be made in the Register. In case of the old refundees, date of receipt of return and application should be entered in the PAN register and also in the register of refund applications.

11. Documents to accompany the claim

11.1 An assessee has to make the claim for refund in the prescribed form (No. 30) which should be accompanied by :-

- i. A return of income in the prescribed form (No. ITS 3) properly and correctly filled in and also properly verified by the assessee. The status of the assessee, the previous year, the assessment year and the amount of tax deducted at source or paid otherwise should be correctly filled in the return form;
- ii. Dividend warrants and tax deduction certificates on the basis of which tax credit and consequent refund is claimed;

Relevant documents regarding investments which have been made and subsequently disposed of during the previous year relevant to the assessment year; and

iii. Challans for payment of tax, salary, certificates, etc., applicable in cases where refund is being claimed on account of excess payment of tax.

11.2 Dividend warrants and certificates should be filed in original. These should be duly signed by the assessee to evidence ownership. If, for some reasons the original certificates are not traceable, duplicates issued by the concerned companies may be furnished. Duplicates in any other form are not admissible. However, in such cases, an indemnity bond stating that the original certificates are not traceable and no refund in respect of such warrants had already been claimed, should also accompany the claim. The indemnity bond should be on a stamp paper of the prescribed value, depending upon the amount of tax deduction. [refer to para 13.1 for format of indemnity bond]

11.3 After this is done, the refund claim has to be scrutinised and for that purpose the refund application has first to be checked with a view to seeing that : -

- i. the application is within time;
- ii. the vouchers relate to the relevant year;
- iii. the relevant certificates are properly signed; and
- iv. the return of income is properly filled.

11.3.1 If any defect is noticed, the claimant should be asked to set it right immediately to avoid delay in disposal of the refund and also to take care that no interest burden falls on government, when the delay is due to a defective claim made by the assessee.

11.4 In case of double Income-tax relief the refundees sometimes find it difficult to file the original dividend certificates, because those certificates are to be submitted elsewhere for the same purpose. In such cases certified copies of the dividend certificates concerned or a certificate containing the requisite particulars from the Income tax Authority of the country where the dividend certificates have been filed, should be accepted by Assessing Officers. If the refundee files original certificates with his application, but they are subsequently required by him to be produced elsewhere, they should be returned with least possible delay even if the assessment or refund proceedings have not been completed, but before doing so, particulars of dividend and tax should be recorded.

12. Duplicate dividend warrants and TDS certificates - acceptance of

12.1 In certain cases, original certificates of deduction of tax or the dividend warrants are lost and duplicates are filed. When such a claim is received, the Assessing Officer should request the claimant to state in writing the circumstances under which the original certificates were not being produced. The claimant should also be asked to confirm in writing that he had not at any time claimed or obtained any refund with reference to the same dividend or tax deduction certificate. The claimant should also confirm that he will not do so in future as well. He should be requested to file an indemnity bond before the refund application is entertained. The full particulars relating to the loss of the original certificates and acceptance of duplicate certificates should be entered in the prescribed register maintained for the purpose (Annexure-II).

12.2 The companies at their end, in order to cover the risk of double refund adopt the following procedure : -

i. The word 'Original' is marked, generally printed, in bold letters at the top of the original certificates of deduction of tax from interest on securities and debentures with a footnote that they should be carefully preserved for the purpose of income tax refunds.

ii. The word 'Duplicate' is marked, generally printed, in red and bold letters at the top of the duplicate certificates. The duplicates in such cases do not give the same number and date as the original but bear a different number and actual date of its issue. A reference is also given at the top of the duplicate thus :-

'Duplicate issued for original

No. date

13. Indemnity Bond

13.1 Where a duplicate certificate is entertained for refund, the Assessing Officer has to take an indemnity bond in the following form :-

INDEMNITY BOND

I hereby undertake to indemnify the President of India against any loss that may be caused by granting refund on the original of the following dividend warrants/certificate :-

| No. Of Warrants / Certificate | Date | Name of Deductor | Nature of Payment | Amount | Amount of TDS |
|-------------------------------|------|------------------|-------------------|--------|---------------|
| 1 | 2 | 3 | 4 | 5 | 6 |
| | | | | | |

I also certify that I have neither claimed nor obtained refund of tax nor will claim nor obtain refund of tax on the original vouchers relating to the above dividend warrants/Certificates.

Date

Signature of the Refundee

14. Securities and shares held by banks on behalf of their clients

14.1 Sometimes owners of securities and shares endorse them to their bankers for collection of interest and dividends. Bankers also purchase securities, shares, etc on behalf of their constituents and hold them in their own names. In all such cases, certificates under Section 203 of the Act are given to the banks concerned for a whole block of securities or shares held in their names. In such cases, the Assessing Officer should accept the following certificate from the bank :-

"We hereby certify that interest on the various securities specified on the back hereof was collected by us on behalf of and that we received payment or were credited with the proceeds thereof (less income tax) as stated on the other side amounting to Rs....."

The securities specified are covered by certificates issued to the Bank under Section 203 of the Income tax Act, 1961.

Signature of the Banker

Address :

Date :

Declaration to be signed by the claimant

I hereby declare that the securities on which interest as above specified has been received are my own property and were in the possession of at the time when income tax was deducted.

Signature :

Date :

N.B. :- The securities are to be produced when required in support of any claim

Reverse Form

| No. & Description of securities | Date of payment of interest after deduction of income tax | Period for which interest has been paid | Amount of interest less income tax | Remarks |
|---------------------------------------|---|--|--|---------|
| 1 | 2 | 3 | 4 | 5 |
| | | | | |

15. Treatment of dividends not supported by certificate

15.1 When dividends are not supported by necessary certificates income declared as such should not be treated as income from dividends but merely income from other sources, and no credit for tax claimed to have been deducted at source is to be given.

16. Issue of refund

16.1 The Assessing Officer issues a refund in the form of a refund voucher payable at the Reserve Bank or the State Bank. The bank will make the payment due on the refund order on the strength of the advice note issued by the Assessing Officer. The refund voucher issued is ordinarily encashable within three months from the date of issue. As it becomes invalid after the expiry of three months, assessee who fail to encash it within the period, should send it to the Assessing Officer who will cancel it and issue a fresh refund together with a fresh advice note to the Bank.

16.2 Soon after the refund is computed, the refund voucher should be prepared. Simultaneously, an entry should be made in the cage at the bottom of I.T.N.S. 150. An advice note (I.T.N.S. 139-A) should also be prepared and signed by the Assessing Officer. Along with the issue of the refund voucher the advice note should be sent to the Bank.

16.3 According to Instruction No .7/2002 dated 01.08.2002, the Assessing Officers should comply with the following aspects while issuing refunds :

- i. Refunds determined where administrative approval is necessary before issue of refund, should be issued within 30 days from the date of determination of refunds.

- ii. Interest u/s 244A should be calculated till the date of signature on the refund by the Assessing Officer.
- iii. Information regarding the number of refunds issued, their pendency and interest paid u/s 244A should be reported monthly in the prescribed proforma (Annexure III).
- iv. All returns in which refunds are payable should be processed first in order to minimise the payment of interest u/s 244A.

16.4 There is a special form of refund (I.T.N.S. 139) which contains three certificates. Before granting the refund, the Assessing Officer must satisfy himself regarding each certificate. The first certificate requires a reference to the assessment record which has to be maintained for each refundee as well :-

16.4.1 The second certificate refers to :-

- i. Entries in the demand and collection register;
- ii. Certificates issued under Section 203 of the Income tax Act; and
- iii. Annual returns under Section 206 of the Act.

16.5 The third certificate requires reference to the cage containing records of refunds in the assessment / refund form I.T.N.S. 150.

16.6 Immediately after a refund voucher is signed an appropriate entry will be made by the Assessing Officer in the record of refunds in the assessment refund form (I.T.N.S. 150) under his signature.

16.7 When a refund has been given to the assessee, on the face of the certificates filed by him the words "considered" should be marked boldly under the signature of the Assessing Officer. They will be kept in the miscellaneous file relating to the assessee and they should not be returned, except in special cases when the assessee requires them to obtain a refund, in connection with double income tax relief, but before doing so it should be verified that they have been properly stamped as "considered". Certified copies of the same should be made and filed in the miscellaneous file of the assessee. If the certificates are returned before the refund is granted, a note should be kept that the refund of tax has not been granted on the particular certificates.

16.8 Prompt service of refund orders / warrants : Since the validity of the refund order is 3 months, the Assessing Officers should take care to see that refund orders are despatched by registered post acknowledgement due only and served on the assessee immediately after they have been signed. Simultaneously, the corresponding advice should be promptly sent to SBI / RBI.

16.9 Procedure for Non-MICR refund vouchers / orders : If the applicant is a resident and the amount of refund is small, say upto Rs.250 the amount may be sent by money order at Government cost, if the assessee requests for the same. With a view to facilitating the easy encashment of refund to smaller taxpayers, the Board has decided that advice notes in respect of refund orders upto Rs.999/- will not be issued w.e.f. 1st January, 1980. The refund vouchers in case of refunds of upto Rs.999 will be issued from books to be specially printed for this purpose. The refund voucher will bear the legend "valid for amounts upto Rs.999 only" at the top and numbers for corresponding advice note etc. will be missing. The refund

voucher book in such cases will have three foils. The assessee will be sent the first foil (in cheque form) and the second foil (in advice form) and he will present both the foils of the refund voucher issued to him to the bank for encashment and the bank will make immediate payment. The second foil (advice form) will be returned subsequently by the bank to the designated officer. The third foil of the refund order will be kept as office copy. However, in respect of refund vouchers for Rs.1000 or above, each refund order will have four foils. The first foil (in cheque form) will be issued to the assessee. The second and third foils namely the advice note will be sent to the bank which will after encashment of refund order, enter the same in the refund scroll and return one set of the scroll and second foil of the advice note to the Zonal Accounts Officer. The third foil is sent to the designated officer. The fourth foil will remain as office copy in the book.

16.10 Procedure for MICR refund vouchers / orders : The refund vouchers in case of refunds of upto Rs. 999 will be issued from books to be specially printed for this purpose bearing the legend "valid for amounts upto Rs. 999 only". The Refund voucher book in such cases will have three foils. The assessee will be sent the first foil (in cheque form) and the second foil (in advice form) and he will present both the foils of the refund voucher issued to him to the bank for encashment and the bank will make immediate payment. The second foil (advice form) will be returned subsequently by the bank to the designated officer. The third foil of the refund order will be kept as office copy. However, in respect of refund vouchers for Rs.1000 or above, each refund order will have four foils. The first foil (in cheque form) will be issued to the assessee. The second and third foils namely the advice note will be sent to the bank. After encashment of the refund order, the bank will enter the same in the refund scroll. One set of the scroll and second foil of the advice note will be sent to the Zonal Accounts Officer. The third foil is sent to the designated officer of the Regional Computer Centre. The fourth foil will remain as office copy in the book.

17. Issue of duplicate vouchers and revalidation of refund voucher

17.1 (a) Refund vouchers are valid only for three months from the date of issue. They should not be revalidated after the expiry of the period of their currency; instead duplicate refund vouchers should be issued. When a duplicate refund voucher is asked for on the expiry of the period of the original voucher, the original voucher should be cancelled by the Assessing Officer. It will be attached to its counterfoil and a new voucher will then be issued giving necessary cross references in the counter foil of both the vouchers. Appropriate entries should also be made in the assessment refund form (I.T.N.S. 150).

(b) When a duplicate voucher is asked for on the ground that the original has been lost, the duplicate will not be issued until the period of validity of the original voucher has expired and the Assessing Officer has satisfied himself that the original has not been encashed and its payment at the Bank has been stopped.

18. Instructions regarding use of refund voucher and advice notes

Manual processing

18.1 (a) Refund vouchers

i. The refund voucher forms and advice notes are printed at the India Security Press, Nasik, on water marked paper with the Legend " Government of India " printed all over in micro print. They are supplied to Assessing Officers through their Commissioners. The

books of refund vouchers and advice notes as also each voucher contained therein have been machine numbered serially and further as a measure of security, single letter prefixes have been allotted to each Commissioner's charge. The prefixes precede the book number of both refund vouchers and the advice notes. The refund vouchers will bear the same number as the advice note.

- ii. Each book contains 50 to 100 vouchers numbered serially and is to be stamped with the stamp of the office of issue. The month and the date of issue is given in words and not in figures.
- iii. the blank spaces in the voucher have to be filled in ink and any corrections have to be attested with the full signatures of the Assessing Officer.
- iv. The books of refund vouchers will remain in the personal custody of the Assessing Officer who will intimate to the branch of the State Bank of India / Reserve Bank of India, as the case may be, the book which he is using. In the case of a special circle dealing with salary cases the number of the book brought into use is notified to the Accountant General who publishes it in the Gazette.
- v. There will ordinarily be one refund order book for a bank or banks in a district or circle / ward but the Commissioners of Income tax may at their discretion prescribe refund order books for each Bank where they may consider it necessary to do so.
- vi. A refund voucher is like a cheque payable to order. It is for this reason that the books of refund vouchers are kept in the personal custody of the Assessing Officer.

18.2 (b) Advice note

- i. With the issue of refund order an advice note is simultaneously issued to the bank on which the refund order is drawn. Advice note forms are also printed at the Security Press, Nasik, like refund vouchers and bear the same numbers. Accordingly the Assessing Officer has to take care that the advice note for a particular refund voucher is issued on the same number.
- ii. Other particulars, such as the date of issue, name of the payee, amount of refund etc., should be correctly noted therein.
- iii. The refund order will be cashed only after the advice note has been received by the bank. The classification head to which the refund amount has to be debited must also be noted in the advice note.
- iv. In order to ensure correct encashment of the voucher, the advice note must be sent direct to the bank.
- v. The fact whether a refund order has been crossed or not should be stated in the advice note.

Computerised Processing

18.3 Pre-printed continuous refund stationery is available for issue of refunds when returns are processed using AST Software. The detailed procedure to be followed in this regard are contained in AST Instruction No. 13 dated 18-10-2002 (Annexure-IV)

19. Prompt disposal of refund applications.

19.1 Refund applications should be expeditiously disposed. Prompt disposal of refund applications earns goodwill for the department and is in the interest of public relations. In order to ensure this, a register in the following form should be maintained in every office. Assessing Officers should themselves review this periodically.

| S.No. | Name & Address of Applicant | PAN No. | Date of receipt of application enclosures | Date of Disposal | No. of Refund Order issued (Book No. & with Voucher No.) | Amount | D&C Regr. No. | Assessing Officer's initials |
|-------|-----------------------------|---------|---|------------------|--|--------|---------------|------------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| | | | | | | | | |

20. Guidance to the assessee

20.1 It is the duty of an assessing officer to guide the taxpayer in every reasonable way, particularly in the matter of claiming any relief. The Board has, therefore, laid down that the Assessing Officer must draw the attention of the assessee to any refund or relief to which he may be entitled. Below are given some of the examples (which are by no means exhaustive) which indicate the attitude that the Assessing Officer should adopt :

- a. Section 197 of the Act . - The officer should in every appropriate case bring to the assessee's notice the possibility of obtaining a certificate authorising deduction of income tax at a lower rate or no deduction of income tax as the case may be.
- b. Section 264 of the Act. - Cases in which the Assessing Officer thinks that an assessment should be reviewed must be brought to the notice of the Commissioner of Income tax.
- c. Section 154/155 of the Act.. Mistakes should be rectified as soon as they are detected without waiting for the assessee to point them out.
- d. Section 89 of the Act. - Cases where relief can properly be given under this sub section should be reported to the Commissioner.

21. Security measures to be adopted for refunds.

21.1 To avoid the risk of a fraudulent encashment, the Assessing Officer should coordinate with the local Managers of the banks, the Treasury or the Sub-Treasury to ensure that no payment against a refund voucher is made, unless the person presenting it establishes his identity.

21.2 All refund vouchers of the value of Rs.1000 or above should invariably be crossed and made payee's account only. The Reserve Bank and the State Bank of India treat a crossed refund order identically as a crossed cheque.

21.3 There are two types of refund vouchers. One is meant for the issue of refund vouchers similar to MICR cheques used by Banks and the other one is of bigger in size. In both cases there are refund vouchers for the amount upto Rs. 999 and above. In respect of the cases of refund below Rs. 1,000, advice to the Bank - only one copy - is sent along with the refund vouchers. In the case of refund exceeding Rs. 1,000, the advices in two copies are sent to Bank.

21.4 The RBI has issued guidelines to the effect that all cheques issued by any authority have to bear the details of type of account SB / CA, bank account number, name of the bank and branch alongwith the name of the payee. Therefore, in order to prevent fraudulent encashment of refunds issued by the department, the Assessing Officers have to mention the above details alongwith the name of the assessee in the refund vouchers.

22. Delivery of refund voucher

22.1 In their latest instructions, the Board have laid down that all refund orders henceforth should invariably be sent to the assessee by registered post acknowledgment due within 7 days of the order resulting in refund in question.

23. Duties of inspecting officer

23.1 By Instruction No. 562 dated 27.6.1973, the Board have directed that Addl./Joint Commissioners during inspection of their ranges should check the refunds issued by their Assessing Officers. The exact scope of this instruction is indicated below :-

“XIX/I/101 - Checking of Refunds - Duties of Inspecting Officers - Para 17 Chapter XVII, Official Manual Vol. II Section II.

Para 17. Chapter XVII of Income tax Department Office Manual Vol. II Section II, Page 169 provides that : The staff of the Inspecting Assistant Commissioner during inspection of an Income tax Circle should adopt the following procedure in checking refunds granted :-

- i. All refund cases where the refund is Rs.500 or above must be checked : refunds of below Rs. 500 must be 10 per cent test checked.
- ii. All vouchers exceeding Rs.1000 which have been issued during any year should also be checked and initialed by the Inspecting Assistant Commissioner and he should comment on the delays in disposal of the refund applications and excess or short refunds in Inspection Reports.”

24. Verification of encashment of refund vouchers

24.1 Now all the encashed refund vouchers are being sent by the Reserve Bank / State Bank of India to the Central Treasury Units (CTU) functioning under different Regional Computer Centres (RCC). They are being processed at the CTU and RCC. The refund vouchers after processing will be stored centrally by the computer section and they will not be distributed to the respective Assessing Officers. For the Assessing Officer, the report generated by the CTU and authenticated by the Designated Officer (DO) will be the record for verification of the refunds issued by him.

24.2 At the CTU, the following three reports are generated in respect of refunds :-

- i. Collection Refund Report (CTU wise)
- ii. Collection Refund Report (CIT wise)
- iii. Collection Refund Report (AO wise)

24.3 In the reports generated Assessing Officer wise, the details regarding the amount of refund issued, RO number, date of issue of Refund order, and date of encashment are generated, in addition to the details of the PAN / and name of the assessee. On receipt of the refund report, the Assessing Officer will take the following steps.

24.4 He will check i) running AO code; ii) page number ; iii) entry number and iv) total amount of refunds issued. He will also check the daily refund register to find out if any entry does not relate to him and in case any of the refund not relating to him finds place in the daily refund register, he shall intimate the CTU for carrying out appropriate corrections.

24.5 By cross verifying this report with the counterfoils of the issued RO Book, the Assessing Officers will check up for any omissions or discrepancies. It may be borne in mind that the daily refund register is like a cash book and all its entries shall be considered with cross references. In case of any query, the same has to be referred to the designated officer at Regional Computer Centre, for verification and report.

24.6 In networked stations, the AO can also verify on-line whether any refund issued by him has been encashed or not. This can be done using the “query mode”. With reference to other places if the AO wants to verify encashment details, he can make a reference to the designated officer (Computer Operations) at the respective RCC.

25. Attachment of refund due to the assessee

25.1 A sum of money due from an Assessing Officer to an assessee, e.g., to a shareholder in a company by way of refund under section 237 of the Income-tax Act, is a debt within the meaning of Section 60 of the Code of Civil Procedure and as such is subject to attachment in execution of a decree against the assessee to whom it is due. If a notice to the Assessing Officer under Rule 52, Order XXI of the Civil Procedure Code is followed by an order from the Court requiring the Assessing Officer to pay the amount to the decree holder, the Assessing Officer must comply with the order.

26. Appeal against Assessing Officer's order refusing refund or allowing short refunds

26.1 Section 246A(1)(i) of the Act provides for an appeal against the order of the Assessing Officer refusing refund claimed or allowing short refund. The appeal lies to the C.I.T. (Appeals) in the first instance and to the Income tax Appellate Tribunal thereafter. An alternative course is also open to the assessee viz., a petition to the Commissioner for revision of the order of the Assessing Officer.

27. Punishment for making false claim

27.1 Section 277(ii) of the Act lays down that a person submitting a false application for refund is punishable on conviction before the Magistrate with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

28. Adjustment of refund against outstanding tax demand.

28.1 All refunds may not be settled by actual payments in the form of refund orders. Wherever it is found that tax for some other years, either earlier or subsequent to the year to which the refund relates, are outstanding against a person, the refund due is adjusted against the outstanding demand and the balance, if any, alone is returned to him as per provisions of

Section 245 of the Act. It is imperative that the adjustment is made under intimation to the assessee.

29. Exemption certificate

29.1 Section 197 authorises the Assessing Officer to issue a certificate to the tax deductor directing him to either deduct tax at lower than the prescribed rate or not deduct any tax at source at all in respect of specific cases on receipt of the prescribed application from the person in whose case tax is to be deducted. This power has to be exercised carefully after considering all the circumstances of the case; such as, the likely total tax liability of the taxpayer, the need to ensure that he promptly files his return of income, etc.. The AO should also keep in mind that if these certificates are issued it will reduce his work later.

29.2 The need for the issue of an exemption certificate arises in the following circumstances: -

- i. U/s 192 of the Act when salary is payable;
- ii. U/s 193, when a person is in receipt of interest on securities;
- iii. U/s 195, where any other sum is paid to a non-resident
- iv. Contractors and other cases

29.2.1 Where in the above cases, the person is liable to tax at a lower rate or not liable to tax, exemption certificates may be issued by the Assessing Officer on an application made by him accompanied by a return of income.

29.3 Likewise, the Assessing Officer should issue exemption certificates in cases where income of an institution is exempt from income-tax under Sections 11 and 12 of the Act or where the income of any person is believed not to be subjected to large fluctuations and either does not reach the taxable minimum or is liable to tax at a lower rate, anticipatory certificates may be granted in advance for a lower rate or nil deduction of tax :-

- i. Where the securities belong to an estate vested in the Administrator General or the Official Trustee and the shares of the beneficiaries are known it is the beneficiaries who apply for exemption certificates. But in such cases, it is essential to ascertain whether the shares are both definite and known, before the certificate is issued .
- ii. The Authorised Officer should satisfy himself that the securities for which the exemption is applied for are in order by a reference to the security documents.
- iii. In the certificate, the name of the person in question along a detailed description of the securities and their distinctive numbers should be given.
- iv. In respect of government securities held in savings bank, deposited in the safe custody of the Accountant General, Posts and Telegraphs, the usual certificate granted by certain Assessing Officers authorising deduction of tax at a lower rate is not suitable. The following points may, therefore, be borne in mind while issuing the certificate in the prescribed form : -
 - b. The Accountant General, Posts & Telegraphs will be treated as the person paying the interest;
 - c. The savings bank depositor will be treated as the person receiving the interest;
 - d. The holdings of separate depositors will be shown separately even though one of them may be a minor whose income is included in that of the father for purposes of Income tax under Section 64 of the Act; and

e. Descriptive particulars will be taken from the safe custody receipts given by the Accountant General, Posts and Telegraph and the numbers of the government securities will not be called for, unless it is otherwise necessary.

29.4 Before issuing such a certificate, the Assessing Officer should satisfy himself that the income of the applicant is liable to tax at a rate lower than the maximum rate. At the time of issue of fresh certificates, the position of earlier years should be reviewed and if it is found that the assessee is liable to pay tax higher than that which was deducted, action under Section 147 of the Act should be taken for such years.

29.5 On obtaining such a certificate the person shall produce it before the disbursing officer who will only deduct tax at the rate mentioned therein.

29.6 The certificate will be issued in the prescribed form as appropriate in a particular case. The certificate will remain in force till it is cancelled by the Assessing Officer. In case of non-residents whose income does not fluctuate from year to year, the Assessing Officer will issue such a certificate with a three year validity. At the time of issuing a fresh certificate, however, the position in earlier years should be reviewed for the purpose of taking action under section 147 of the Act.

29.7 The exemption certificates should be sent by the Assessing Officer to the non-residents by air mail instead of ordinary or sea mail.

29.8 The names of persons to whom the exemption certificates are issued should be entered in red ink in a separate part of the General Index register or PAN register and such cases should be reviewed every year for deciding whether a notice under Section 142(1) of the Income-tax Act may be issued or not. In case it is decided to issue such a notice, the annual number in column 1 will be entered and in other cases the Assessing Officer should enter the letter "R" (for review) in red ink in the same column under his initials.

Annexure - I

Register of Receipt of Refund Applications

| Sl. No. | Name & address of applicant | PAN No. | Date of receipt of applicat ion with enclosu res | Date of disposal | No. Of Refund order issued (Book No. & Voucher No.) | Amoun t | D & C Regr. No. | ITO's Initials |
|------------|-----------------------------------|------------|---|---------------------|--|------------|-----------------------|-------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| | | | | | | | | |

Annexure - II**Register of Duplicate Dividend Warrants**

| Sl. No. | PAN / GIR No. Of refundee or person obtaining rebate | Name of the refundee or person obtaining rebate | Name of the Company granting duplicate dividend warrant | Amount of Dividend | Whether duplicates were accepted in either or both of the past two years in the same cases and for the same Company's dividend |
|---------|---|---|--|-----------------------|--|
| 1 | 2 | 3 | 4 | 5 | 6 |
| | | | | | |

Annexure - III

Monthly Report on Refunds (MRR)

Ward / Circle :
Range :
CIT Charge :
CCIT Charge :
CCIT Region :

1. No. of returns processed during the month
cumulative figure for the financial year.

2. No. Of returns out of (1) above in which
refunds were determined cumulative figure
for the financial year.

3. No. Of refunds determined by orders other
than processing during the month cumulative
figure for the financial year

4. Total No. Of refunds determined during the
month (2+3) cumulative figure for the financial year

5. No. Of refunds out of (4) above in which
refunds were despatched during the month
cumulative figure for the financial year.

6. Details of refunds pending at the end of the
month where refunds have already have been
determined (No. Of pending refunds to be
entered in the table below)

| Between 15 days and 1 month | Between 1 month and 6 months | Between 6 months and 1 year | More than 1 year |
|--------------------------------|---------------------------------|--------------------------------|------------------|
| | | | |

7. Total amount of refund issued during the
month cumulative figure for the financial
year (In. Rs.)

8. Out of 7 above the amount paid as interest
u/s. 244A cumulative figure for the financial
year (In. Rs.)

Signature of the Officer

DIRECTORATE OF INCOME (SYSTEMS)

ARA Centre, Ground Floor, E-2, Jhandewalan Extension
New Delhi - 110055

AST INSTRUCTION NO. 13

F.No.SW/03/18/2002/01/DIT(S)

Dated : 18.10.2002

To

The Chief Commissioner of Income-tax (By Name)

Ahmedabad / Allahabad / Amritsar / Bangalore / Baroda / Bhopal / Bhubaneswar / Bareilly / Chandigarh / Chennai / Cochin / Coimbatore / Dehradun / Delhi / Durgapur / Guwahati / Hubli / Hyderabad / Indore / Jaipur / Jalpaiguri / Jodhpur / Kanpur / Kolkata / Lucknow / Ludhiana / Madurai / Meerut / Mumbai / Nagpur / Nashik / Panaji / Panchkula / Patna / Pune / Raipur / Rajkot / Ranchi / Shimla / Shillong / Surat / Thane / Trichy / Trivandrum / Udaipur / Vishakhapatnam

and

The Commissioner of Income-tax (By Name)

Agra / Bikaner / Calicut / Dhanbad / Gandhinagar / Gwalior / Jabalpur / Jalandhar / Kolhapur / Muzzaffarpur / Mysore / Patiala / Rohtak / Sambalpur / Varanasi / Vijayvada / Delhi(CO) / Mumbai (CO) / Chennai (CO) / Ahmedabad (CO) / Bangalore (CO) / Bhopal (CO) / Bhubaneswar (CO) / Kolkata (CO) / Cochin (CO) / Chandigarh (CO) / Hyderabad (CO) / Jaipur (CO) / Kanpur (CO) / Patna (CO) / Pune (CO) / Guwahati (CO).

Sir/Madam,

Subject : Functionality for printing of refund cheques on Pre-printed Continuous Refund Stationery : - Modification in AST Software - For RCC Databases - regarding :-

Assessment Information Software (AST) has been modified to allow computerised printing of refund cheques through AST system.

2. By using this facility the Assessing Officers will be able to generate and print refund cheques on Pre-printed Continuous Stationery for Refunds in cases where processing is being done on AST. This stationery has been specially designed for this purpose and is to be supplied by the India Security Press, Nashik. Refund cheques will be printed on Dot Matrix Printers provided to the AOs.

3. The AST system provides that only Assessing Officers will be able to generate and print refunds. The refund cheques will be printed directly onto the printer without generating any print file. This has been provided to avoid any manipulation of refunds to be printed.

4. Provision has also been made to allow printing of refunds on Pre-printed Continuous Refund Stationery through system in cases where processing u/s 143(1) has been done on AST before the release of this Instruction and where refunds have not been issued manually.

5. Complete detail regarding procedure to be followed for printing of Refunds on Pre-printed Continuous Refund Stationery is given in Annexure 'A'.

6. Procedures mentioned below are required to be carried out for upgradation of the AST application software at all the Regional computer centres. You are requested to direct the concerned officers to implement the following instructions.

a. Download all files in binary mode from the server 128.91.16.235 using the use rid : tcs password : tcs123. The Directory name is : /Virus/home/tcs/ast/ast2002-03/version6.

b. The file ASTO1R23.FMX has to be executed by the database administrator only on RCC database. Before execution, user has to connect with NCC database and user has to take a backup of the existing AST Database. In case, the administrator faces any 'E' type of error, the same may be informed to this Directorate with complete details of the error message.

7. On successful completion of the above procedure an intimation may kindly be sent to this Directorate.

Yours faithfully,

Sd/-

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Director of Income-tax (Systems)

Procedure for printing of Refund Cheques on
Pre-Printed Continuous Refund Stationery through AST

I. Prerequisites for Printing of Refunds.

- i. The Assessing Officer should have Pre-printed Continuous Stationery for Refund Cheques (on 11 inch format) to be supplied by the India Security Press, Nashik. DIT(RSP&PR) has already requested Indian Security Press to supply computer refund stationery directly to the 60 stations on network.
- ii. The Assessing Officer should have Dot matrix Printer.

II. Steps to be followed for printing of Refunds

Step - 1 Cheque book allocation

Before starting printing of refunds, the Assessing Officer must enter detail of all the blank refund cheques available for printing. Every lot of refunds is to be prefixed by a different series which will work as Cheque Book Series e.g. AAA.

This functionality is available under option “Other” - “Cheque book Allocation”.

Step - 2 Printing of Refund Vouchers

- i. The AO must complete Step-1 and load Pre-Printed Continuous Refund Stationery on the Dot Matrix Printer.
- ii. Go to option “Others” - “Refund Vouchers”. A screen will open up.
- iii. Both, refund vouchers upto Rs.999/- and above Rs.1000/- can be printed from this screen.
- iv. User has to first select the category of Refunds to be printed i.e. upto Rs.999/- or above Rs.1000/-
Then select Series of Refund cheques to be used for printing (same as entered in Step-1).
Then select Micr or Non-Micr.
Give end Cheque Number.
Giving PAN and Assessment Year is optional. This can be used when single refund is to be printed.
- v. Compare the starting Refund cheque number on the screen with the number of starting refund cheque on Pre-printed Continuous Refund Stationery loaded on the Dot Matrix Printer to ensure that the number is same at both the places.
- vi. Once all required parameters are entered, Press “Generate”.
- vii. System will allow printing of refund vouchers up to minimum of number of refunds pending for printing in the system or up to end Refund Cheque number entered into the system.
- viii. Once refund vouchers are generated/printed, Press “OK”.
A new screen will appear for confirmation by the Assessing Officer that cheque(s) have been printed satisfactorily or not.

System permits cancellation of refund cheque at this stage, if the situation so warrants e.g. the refund stationery has been torn etc.

After verifying the detail of refunds on the screen with the printed refund cheques, Assessing Officer has to press Apply button.

This will complete the process of printing of Refunds.

Note :-

- i. Every time when refunds are to be printed, Intimation Sheets should be preferably printed after finishing printing of refunds of both types (upto Rs.999/- and above Rs.1000/-).
- ii. Assessing Officer should not sign refunds till manual verification of printed refunds with the detail of refunds on system has been completed.

Step - 3 In case printing of refund cheques is interrupted due to any problem like power failure, network failure etc.

If printing of refunds is interrupted due to any reasons, on restarting, the Assessing Officer has to go back to **Step - 2** and follow the prompts given by the system to enable the “Verification” button.

Step - 4 Printing of Intimation sheet u/s 143(1), Order u/s 154 with Refund Cheque Number and date (in refund cases)

In cases resulting in refund as a result of processing u/s 143(1) or rectification order u/s 154 and where the refund has been printed on Pre-printed Continuous Refund Stationery, the system allows printing of Intimation Sheet u/s 143(1) and rectification order u/s 154 with details of Refund Order (Refund Cheque Number, Date of refund). These can be printed following the normal procedure for printing of reports in AST.

Step - 5 Cancellation of cheques

A facility has been provided for cancellation of cheques issued through AST on Pre-printed Continuous Refund Stationary. This may be required where the time limit of refund has expired or the refund has been lost.

Go to option “Other” - “cancel Cheque”.

Assessing Officer to query either by PAN or Cheque Number.

Once the correct refund cheque number is retrieved on the system, AO to click on the Cancel Cheque box on the screen and save the information.

After canceling the refund on this screen, the Assessing Officer can print the Refund Cheque again.

Step - 6 Reports

The Assessing Officer can generate following reports from AST system :

- i. Refund Register - This report gives detail of all the refunds issued from AST on Pre-printed Continuous Computer Refund Stationery.
- ii. Report of Cancelled Cheques - This report gives detail of all the refund cheques cancelled.

Step - 7 Provision for printing of refunds on Pre-printed Continuous Refund Stationery in cases where order u/s 143(1) has been passed before release of the present Instruction.

Go to option “Other - “Refund Cheque Entry”.

Click on “Thro’ System”

This will enable the AO to print refunds through system on Pre-printed Continuous Refund Stationery, in those cases where order u/s 143(1) has been passed before issue of the present instruction and installation of Refund patch (AST01R23.FMX).

This screen / functionality was earlier being used for entering Refund Cheque Numbers and date of issue of refunds issued manually in cases processed on AST.

DOs and DON'Ts for issuing Refunds

DO

DON'T

- | | | |
|-----|---|--|
| 1. | Ensure safe custody of RO book | Keep RO Outside |
| 2. | Ensure proper account of ROs | Keep RO account outside |
| 3. | Ensure cancellation of TDS certificates | Issue RO without verification |
| 4. | Ensure despatch of advices in advance | Send RO before despatch of advice |
| 5. | Inform bank on usage of fresh RO books | Issue blank RO |
| 6. | Endorse “A/c Payee Only” on RO | Sign RO before all formalities are completed |
| 7. | Ensure entry of RO issued in assessment records | Hand over RO in person to assessee |
| 8. | Ensure Sl.No. of RO are proper and there is no missing RO in the book | |
| 9. | Ensure uniform signature, and that the attested specimen signature is sent to the bank | |
| 10. | Ensure name and amount in words and figures are correctly entered. Ensure interest u/s. 244A is correctly given on the reverse | |
| 11. | Send RO by regd post / ack due | |
| 12. | Ensure issue of refund (Corporation Tax, Income-tax etc in the correct form) | |
| 13. | Adjustment RO to be correctly done towards outstanding taxes in the respective heads. | |
| 14. | Ensure challan is accompanied with the Adjustment RO | |
| 15. | Issue prior intimation to the assessee for adjustments | |

Chapter- 12

RECOVERY

1. Introduction

1.1 The work relating to recovery of tax is entrusted to Tax Recovery Officers (TROs). The restructuring of the Department effected during the year 2001 and the Board's order u/s 119 of the Income-tax Act in F.No.402/2/2002-ITCC dated 18th January, 2002, has considerably increased the scope of the functions of the TRO. He is now expected to initiate recovery proceeding by drawing up a recovery statement under his signature in the prescribed form in all the cases where demand is more than one year old.

2. Self contained code for recovery

2.1 Sections 222 to 232 of the Income Tax Act, 1961 and the Second and Third Schedules thereto, together with the Income Tax (Certificate Proceedings) Rules, 1962 constitute a self contained code prescribing various modes for the recovery of arrears of income-tax. These provisions are also applicable for the recovery of arrears of wealth-tax and gift-tax by virtue of section 32 of the WT Act, 1957 and section 33 of the Gift-tax Act, 1958. Recovery of the estate duty arrears is to be made by the Officers of State Governments as per provisions of section 73(5) of the Estate Duty Act, 1953.

3. Modes of recovery

3.1 Under section 2(44) of the Income Tax Act, Tax Recovery Officer means any Income-tax Officer who may be authorised by the Chief Commissioner or Commissioner of Income-tax, by a general or special order in writing, to exercise the powers of a Tax Recovery Officer. The Tax Recovery Officer can recover the arrears of tax by any or all of the following modes:-

- i. Attachment and sale of the defaulter's movable property
(Part II of Schedule II to the IT Act)
- ii. Attachment and sale of the defaulter's immovable property (Part III of Schedule II to the IT Act)
- iii. Appointment of a receiver for the management of the defaulter's movable and immovable property (Part IV of Schedule II to the IT Act)
- iv. Arrest of the defaulter and his detention in a civil prison
(Part V of Schedule II to the IT Act)

3.2 The Tax Recovery Officer may take recourse to any one or more of the above mentioned modes of recovery. He can either simultaneously or in any order, execute the above processes for recovery. The above four modes are not exhaustive and the Government can recover the dues by any other mode open to it under any other law e.g. by filing a civil suit in a Court of law.

4. Procedure for drawing up of Tax Recovery Certificate (TRC)

4.1 Section 222 as amended by the Direct Tax Laws (Amendment) Act, 1987 empowers the Tax Recovery Officer to draw up a statement under his signature in the prescribed form (i.e. recovery certificate) whenever an assessee is in default or is deemed to be in default in making a payment of tax. Taking note of the fact that the relevant records and registers

required for drawing up of this statement are available in the office of the Assessing Officer, it has been decided by the Board that the Assessing Officer will get the statements prepared, sign the same and then pass on these to the Tax Recovery Officer for the latter's signature. These statements will be sent after getting the correctness of arrears verified from the assessee. The Assessing Officer has also to ensure that he has taken all possible action under the law to recover the demand before intimating the TRO for drawing up the statement under section 222. Only where specialised recovery action by the Tax Recovery Officer in the form of attachment and sale of property etc. is called for, should arrears be certified to the Tax Recovery Officers. The Assessing Officer will send the intimation to TRO only with the approval of the Joint / Addl. Commissioner of Income Tax . The Assessing Officer will certify that he has completed all the penalty and recovery proceedings under sections 221 and 226. The JCIT/Addl. CIT will also satisfy himself that the Assessing Officer has taken all steps to recover the demand specifically by completing the proceedings under sections 221 and 226. In suitable cases, the Commissioners should also issue a notification under section 226(5) authorising the Assessing Officers to recover the tax arrears by distraint and sale of movable properties in the manner laid down in the 3rd Schedule to the Income Tax Act, 1961.

5. Details to be furnished by Assessing Officer

5.1 The statement to be prepared by the Assessing Officer should be accompanied by details of assets of the defaulter and Form No.57 duly filled in (only keeping the TRO's signature portion blank). Since the Tax Recovery Officer has powers under section 226, the details of assets of the defaulter should also include the names of persons from whom money is due or may become due to the defaulter.

6. Time limit for recovery certificates

6.1 With effect from 1-4-1989, there is no compulsion for the recovery certificate to be drawn up within a particular period. However, the CBDT vide its letter dated 18/01/2002 in F.No.402/2/2002-ITCC has specified that the proceedings for recovery of tax may be initiated by the Tax Recovery Officer by way of drawing up of recovery certificates under his signature in the prescribed form specifying the amounts due from an assessee in default or deemed to be in default, in all cases where the demand is more than one year old.

6.2 For a detailed study of the powers and functions of the Tax Recovery Officer and the procedure to be followed by him, reference may be made to the Tax Recovery Officers Manual published by the Board in 1999.

7. Important records and registers to be maintained by Tax Recovery Officers

7.1 The following is the list of important registers with which officials working in Tax Recovery offices should be thoroughly familiar:-

- i. Cash Book - All monetary transactions are entered in this register viz. cash and cheques received from the defaulters.
- ii. Register of Movable and Immovable Properties attached and sold.
- iii. Execution Register - This Register gives the number of warrants issued to and executed by the TRO/TRI.

- iv. Register of Daily Reduction/Collection of Certified Demand - This Register is the source record for the collection and reduction figures to be furnished in the Monthly Progress Report.
- v. Stay Register - contains details of cases in which stay has been granted.
- vi. Installments Register - contains the schedule of installments granted to a defaulter.
- vii. Disposal Register - This is meant for incorporating the details of final disposal of cases.
- viii. Closed Certificates Register - This Register contains the details of cases where certificates were closed on account of appellate reductions/rectifications etc.
- ix. Custody Register - Particulars of articles seized and in safe custody are entered in this Register.
- x. Daily Diary - The work done by TRI day to day is to be entered in the Daily Diary by the Inspector.
- xi. Register of Recovery in case of Companies in liquidation, BIFR and Sick.

7.2 The TRO should ensure that all these registers are maintained regularly and updated every month. The concerned officials should maintain the registers mentioned above regularly. As and when changes arise or action is taken, entries should be made in the registers. The updated registers should be put up to the TRO by the 10th of every month. The TRO should go through the registers and if there are any shortcomings he should point out the same to the officials. He should ensure the proper maintenance of the registers. (Refer Chapter XV of TRO's Manual of 1999 - Pages 127 to 129, for a detailed description of each of the above Registers. The format of the Registers are also given in TRO's Manual - Appendix 26 to 36, from Pages 256 to 270)

8. Reports

8.1 Before the reorganisation of the department the jurisdiction of TROs generally overlapped with many Ranges. Therefore, the TROs were required to send the Monthly Progress Report directly to the Commissioner concerned. However, at present since invariably every Range is having a TRO, the Monthly Progress Report should be sent by the TRO to the Jurisdictional Additional CIT / JCIT.

9. Inspection of TRO's work

9.1 The Range JCIT / Addl. CIT should take up the inspection of TRO's work annually.

Chapter- 13

WRITE-OFF AND SCALING DOWN ARREAR DEMANDS

1.1 When tax demands remain irrecoverable inspite of exercise of the powers of recovery conferred under the Act, the question of write off of arrears should be considered. Rule 31 of the General Financial Rules, 1963 provides that “a claim to revenue shall not be remitted/abandoned save with the sanction of the Competent Authority”. It is in pursuance of this that powers to sanction write off of the revenue have been delegated by the Central Government to the income-tax authorities. Rule 13 read with Schedule VII of the Delegation of Financial Powers Rule, 1978 confers on the Commissioners of Income-tax full powers to write off irrecoverable balances of income tax / wealth tax / gift / tax / expenditure-tax / estate duty demands subject to a report to the next higher authority. It is also provided that the powers of write off may be exercised by a subordinate authority provided that :-

- a. the loss does not disclose a defect in the rules or the procedure, the amendment of which requires the orders of a higher authority in the Finance Ministry; and
- b. there has not been any serious negligence on the part of any Government servant which may call for disciplinary action by a higher authority.

1.2 In other words, the powers of write off rest only with the Finance Ministry in cases where there are such defects.

2. Administrative regulations of the powers of the authorities to write off tax arrears

2.1 As per Instruction No. 1740 dated 29.12.1986 issued by the CBDT in F. No. 375/35/83-IT(B), income-tax authorities have been given powers to write off irrecoverable tax arrears in the following manner:

| <u>Name of the authority</u> | <u>Amount of write off</u> |
|--|--|
| (i) Chief Commissioner of Income Tax | Full powers upto Rs.15 lakhs in each case. |
| (ii) Commissioner of Income Tax | Full powers upto Rs.10 lakhs in each case. |
| (iii) Joint Commissioner of Income Tax/ Addl. Commissioner of Income Tax. | Upto Rs.10,000 in each case. |
| (iv) Asst. Commissioner of Income Tax/ Deputy Commissioner of Income Tax | UptoRs. 1000 in each case. |
| (v) Income Tax Officer | Upto Rs.500 in each case. |

Note: ‘Each case’ should be taken to mean all the assessment years to which the irrecoverable demands may relate in respect of a single assessee.

2.2 Where the tax arrears are Rs.15 lakhs or above in each case, prior approval of the Board is required before passing the orders of write off. For this purpose, the CIT has to send a proposal for write off duly recommended by the Zonal Committee consisting of three

Commissioners including the Commissioner concerned. It should be sent to the Board through the CCIT and Director of Income Tax (Recovery). The administrative approval to the proposal is accorded as per the following financial limits:

| | |
|--|---|
| (i) where the tax arrears are between Rs.15 lakhs & upto Rs. 25 lakhs | Individual Member of the Board. |
| (ii) where the tax arrears are above Rs.25 lakhs and upto Rs.50 lakhs | Full Board |
| (iii) where the tax arrears are above Rs. 50 Lakhs | Board with the approval of the Minister. |

2.3 Where the tax arrears exceed Rs.1 lakh but are less than Rs.10 lakhs, the CIT may pass the order of write off after receiving the approval of the Zonal Committee. In respect of tax arrears exceeding Rs. ten thousand but upto Rs.1 lakh, the CIT may pass the order of write off after receiving the approval of the local Committee. Where the arrears exceed Rs.10 lakhs but are less than Rs. 15 lakhs, the Chief Commissioner of Income Tax may pass the order of write off after receiving the approval of the Zonal Committee, consisting of three Commissioners. The total demand outstanding in each case, and not the amount to be written off should be taken into account to determine the authority which is competent to approve the proposal for write off.

3. Procedure for write off

3.1 Tax arrears may be written off by any one of the following procedures :-

- i. Regular procedure for write off
- ii. Ad- hoc procedure for write off
- iii. Summary write off

4. Regular procedure for write off.

4.1 Only tax arrears that are over three years old and have become “clearly irrecoverable” can be considered for write off. Tax arrears may become irrecoverable on account of any one of the following reasons:-

- i. the assessee has died
- ii. he has become insolvent
- iii. he is not traceable
- iv. he has left India
- v. the company has gone into liquidation
- vi. the firm is dissolved and its business has discontinued
- vii. the assessee has no attachable assets.
- viii. when all the modes of recovery in accordance with the rules laid down in the Second Schedule including the recourse to civil imprisonment of the defaulter are exhausted and the arrears still remain..

4.2 Before recommending a case for write off, the concerned authority should satisfy itself as to whether adequate and timely steps were taken for recovery in the case.

4.3 If, after scrutinising the records and conducting enquiries, the AO is satisfied that it is a fit case for write off, a self- explanatory note indicating the steps taken for recovery and justifying the need for write off should be prepared. A certificate of irrecoverability should also be taken from the TRO. If the arrears have to be written off by the authorities other than the ACIT or ITO, Form B (Annexure I) should be filled in and submitted to the CIT/ Addl. CIT with a self explanatory brief. Tax arrears upto Rs. 10,000 can be written off by the CIT without examination by the Local Committee.

5. Local Committee and Zonal Committee

5.1 In case of tax arrears exceeding Rs 10,000 but below Rs. 1 lakh, the proposal for write off of such demand will have to be referred to the Local Committee consisting of the CIT, the Addl. CIT/ Dy. CIT and the AO within the CIT's charge.

5.2 Where the tax arrears exceed Rs. 1 lakh in any case, a Zonal Committee consisting of the CIT concerned and 2 other Commissioners of Income tax of the same zone will have to scrutinise the proposal for write off of tax arrears with suitable recommendations. Zonal Committees are as constituted by the Board in Instruction no.1840 dated 15.03.1990 in F No 375/13/89-IT(B). The Zonal Committee has to meet at least once a month and ensure continuous review of the unrealisable demand.

5.3 In cases of the tax arrears exceeding Rs. 15 lakhs, reference has to be made to the Board through the DIT(Recovery) for according administrative proposal. Comments of the concerned Chief CIT should be sent along with the recommendations of the Zonal Committee. Complete assessment records together with the recovery folders should be sent to the Board.

5.4 While sending the proposal to the Board through the DIT(Recovery) the CIT should personally look into the enclosures to be sent with the minutes of the meetings of the Zonal Committee. The proposal should contain a brief chronological history of the case.

5.5 After detailed scrutiny, if it is found that the case is fit for writing off of the tax arrears as irrecoverable, the administrative approval of the Board will be communicated to the CIT. The CIT should proceed to pass an order sanctioning the write off of tax arrears as irrecoverable in the prescribed proforma (Annexure II).

5.6 After passing the order for write off, the AO should ensure that the arrears are actually stuck off from the Demand and Collection registers. Wherever recovery certificates have been issued, intimation should be sent to the TRO for the withdrawal of the recoverability certificates. However, the AO's should not communicate the write off of arrears to the assessee.

5.7 Each competent authority while passing the order for writing off the tax arrears as irrecoverable, should add the following words at the appropriate place:-

“The above write off will not lead to release or waiver by the Government of its claim but will be written off in the departmental books. The Government will have the right, at any time, during the next 30 years (thirty years) from the date of the claim to

recover the amount if it appears to the Government that the defaulter has assets or means to pay.”

6. Adhoc procedure for write off

6.1 Besides the regular procedure under which tax arrears can be written off, arrears of tax may also be written off under the *adhoc* procedure. Under this procedure, small demands upto Rs.2000 may be written off, provided they have been outstanding against each assessee for non-availability of assessment records and detailed addresses of the assessee for more than 5 years immediately preceding the financial year during which they are proposed to be written off. The following conditions should however, be satisfied before such write off is effected by the JCIT and AO within their existing powers :-

- a. the demand has been outstanding for at least five years preceding the financial year in which the same is to be written off and that there has been no recovery during the said five years.
- b. the AO should certify that the assessment records of the assessee have not been traceable for the last five years preceding the financial year in which the demand is proposed to be written off. The JCIT / Addl. CIT should certify that the responsibility for the loss of records cannot be fixed.
- c. the address of the assessee has not been available for the said five years in the records available with the AO or the TRO. Even where the last address is available, the assessee has not been available at that address during the last five years.
- d. In case the demand outstanding is Rs.500 or less in each case, the certificate of irrecoverability from the TRO need not be obtained. For demands over Rs.500, however, the TRO should certify that either no recovery certificate has been pending with him or that he has not been able to recover anything during the said five years.

6.2 Demands under the *adhoc* procedure should not be written off on account of loss of records unless the following details have been collected :-

1. Name of the assessee
2. Address
3. Date of issue of recovery certificate.
4. Amount of demand
5. Amount recovered by the TRO
6. Balance
7. Present whereabouts of the assessee.

6.3 Attempts should be made to fix the responsibility and take necessary action against the defaulting officials.

7. Procedure for summary write off

7.1 Small demands not exceeding Rs.25 in each case, can be summarily written off by the Assessing Officer without any further enquiry if the following three conditions are satisfied :-

- i. the amount outstanding is Rs.25 or less in each case;
- ii. the amount is outstanding for more than 5 years;
- iii. the amount does not relate to any live case.

7.2 The following remarks should be made against the relevant entries in the D & C Register where arrears are written off summarily:

"Ignored, as obviously irrecoverable"

8. Procedure for writing off the tax arrears of Rs.500 and below (excluding those falling under summary write off):

8.1 Where a demand in any case is outstanding for more than 8 years, an Inspector of Income-tax may be deputed to enquire into the assets of the defaulter and chances of recovery. In case, his report indicates that the demand has become irrecoverable, the AO may straight away write off the demand without waiting for a normal certificate of irrecoverability from the Tax Recovery Officer. TRO should be immediately informed about such write off and the relevant recovery certificate withdrawn.

9. Effect of write off

9.1 Writing off of irrecoverable demands is purely an administrative act. It does not preclude the department from recovering the amount so written off by exercising the powers under the Income-tax Act. The recovery can also be effected by filing a civil suit. The civil suit cannot however be filed after the expiry of 30 years from the date on which the tax had become payable, in view of Art.112 of the Schedule to the Limitation Act, 1963.

9.2 In accordance with the instructions of the Comptroller and Auditor General of India, audit has to scrutinise the orders sanctioning write off of outstanding demands. Hence as per Board's letter F.No.61-1/64/IT dated 17-2-1964, copies of the individual orders sanctioning write off of income-tax demands of Rs.10000 and above should invariably be endorsed to the respective Directors of Audit.

10. Scaling down of arrears

10.1 Scaling down pertains to the arrear demand in a case where an assessment or assessment proceedings have become final but the assessee is not in a position to pay the full demand. As per DO Letter no. 16-C/9/56-IT dated 31.01.1957, a settlement for scaling down is to be entered into only in a case in which the recovery in the normal course is difficult and the proposed settlement results in a higher recovery than could be realised by recourse to forced sale of assets or other modes of recovery. There may also be cases where forced sales and auctions may not find a ready purchaser. In all such cases, if the department could, though a settlement, recover larger amount of tax arrears than could be realised by enforced sale of the assets or by other methods of recovery, the CIT may endeavour to reach a settlement with the assessee.

11. Conditions for scaling down of arrears

11.1 The settlement should result in larger recovery than could be realised by recourse to enforced sale of assets and by other modes of recovery;

11.2 The amount settled should be paid by the assessee without delay after the finalisation of the settlement and in case instalments are required, adequate security should be furnished;

11.3 An affidavit should be taken from the assessee concerned declaring particulars of his assets as on the date of the settlement and each such settlement should be made expressly subject to the condition that if, at a future date, any assets come to the notice of the department, which were not disclosed in the affidavit the settlement would be treated as void and the Government would be free to go ahead with the recovery proceedings.

12. Powers of scaling down of tax arrears

12.1 Commissioners of Income tax are authorised to exercise powers of scaling down where the aggregate arrear demand outstanding against an assessee is Rs. 1 lakh or less. Cases in which aggregate demand exceeds Rs. 1 lakh should be sent to the Board after the same have been scrutinised and recommended for scaling down by the Zonal Committee.

Authorities exercising power of scaling down in cases where the amount exceeds Rs. 1 lakh:

| | |
|--------------------------------|--------------------|
| Individual Member of the Board | upto Rs. 5 lakhs |
| Full Board | upto Rs. 10 lakhs |
| Minister | Above Rs. 10 lakhs |

The AO or the JC / Addl. CIT has no power to scale down any demand.

13. Procedure for scaling down

13.1 While sending the proposal for scaling down, the CIT should ensure that the following details are enclosed along with the minutes of the meeting of the Zonal Committee:-

- i. The assessee's scaling down petition.
- ii. The AO's report briefly mentioning the facts of the case.
- iii. The assessee's affidavit showing his wealth.
- iv. Information on the points referred to in Form No A (a copy of which is at Annexure III including CIT's observations and recommendations)
- v. Original minutes of the meeting of the Zonal Committee duly signed by all the members of the Zonal Committee and
- vi. Any other document relevant to the case, such as, whether the assessee is a wealth tax assessee or if he has died whether any action under the Estate Duty Act was taken. If the assessee is a wealth tax assessee or if any action has been taken under the Estate Duty Act, all the relevant records have to be enclosed.

13.2 No recovery of the scaled down amount can be made once a settlement is reached unless the affidavit showing the asset is found to be false. Hence, it is necessary to ask the defaulter to mention in the affidavit, in the case of each settlement, that the settlement would be void and the Government would be free to go ahead with the recovery proceedings according to law if, at a future date, any assets come to the notice of the department which were not disclosed in the affidavit.

14. Procedure regarding partial write off of tax arrears

14.1 Partial write off of tax demand may be sanctioned only if there are no chances of recovering more than 25% of the total outstanding demand or in other words, where at least 75% of the total demand is definitely not recoverable. The procedure to be followed is the same as laid down for complete write off of tax arrears.

14.2 In cases in which less than 75% of the outstanding demand is not recoverable even legally, the precondition that at least 75% of the demand should be irrecoverable before a case can be considered for partial write off is not applicable .

14.3 For the portion of the demand to be kept alive for future recovery, in addition to the entry in the demand and collection register, an entry must be made in a separate part of the irrecoverable demand register maintained by every AO so that a close watch can be kept on the recovery of such demand.

14.4 While proposing a portion of tax arrears to be kept alive for future recovery, the Zonal Committee should mention the assets against which such amount has been proposed to be kept alive. The CIT should ensure that the market value as per the Departmental Valuer is (obtained by the AO/ JC/ Addl. CIT) reported to the Board.

14.5 In all cases of partial write off, the amount which has been written off should also be mentioned in the remarks column of the demand and collection register so that if at a subsequent date, some recoveries become possible in a case, the amount written off earlier is not lost sight of.

14.6 In a case where the tax arrears have been written off partially with the approval of the Board, the balance demand to be kept alive for future recovery may be written off, partially or fully subsequently, if found irrecoverable.

15. Register of irrecoverable demand and submission of statistical returns

15.1 The AO is required to keep a register of irrecoverable demands (Proforma as per Annexure IV). On the basis of information contained in the register, a quarterly statement regarding the amount written off by the DCIT/Addl. CIT/AOs as per proforma given in Annexure V should be sent to the CIT by the 15th of the month following the end of a quarter.

15.2 An annual statement regarding remission or abandonment of claims to revenue should be furnished by all Commissioners of Income tax to the Director of Inspection (RS&PR) by 30 June as per proforma (Annexure VI) A half yearly report as per Annexure VII showing progress of recovery of the amount kept alive in cases of partial write off should also be furnished by all the Commissioners to the CBDT.

16. Computerisation and write off of arrears

16.1 In the computerised environment, demands of assesseees are all bunched and maintained in a software called Individual Running Ledger Account (IRLA). This is part of comprehensive package of ITD applications. For each of the assesseees, an Individual Running Ledger Account is maintained in the computer system. The IRLA module allows the Assessing Officer to enter the details of arrear demands which have become irrecoverable. However, if on a future date, any collection is made from the concerned assessee out of written-off demands, the Assessing Officer can mark the grant of write-off as "Non- active".

During January 1998, DIT (RSP & PR), New Delhi has published a brochure on the procedure for write off of tax arrears which may be referred to for a detailed study of the topic.

Annexure-I

FORM - B

Proposal for write off of irrecoverable demand in respect of

QUESTIONNAIRE

1. Full name and address of the assessee (with PAN No.) and Status.
2. Amount and nature of the outstanding demand which is proposed for write-off and for which assessment year – give details separately.
3. Are there any connected cases (e.g. firm and partners, company and its controlling persons, relatives having common or connected sources of income etc). If so, what is the present position in regard to recovery of tax in these cases.
4. What was the returned income, assessed income and tax demand in respect of the years referred to in item 2? (In this connection please mention the section under which the assessment was completed and the date of service of notice of demand).
5. What is the nature and quantum of the main addition made in the assessment years under consideration?
6. Did the assessee contested these assessments in appeal, revision or reference? If so, with what results?
7. Where an order of rectification, appeal, revision, or reference resulting in increase or decrease of demand for any assessment year has been passed, has effect been given to it? If not, will the quantum shown in item 2 requires any consequential change?
8. Was the assessee granted instalments for payment of tax u/s 220(3) or postponement of tax u/s 220(6) in respect of the demand raised for these years? If so, to what extent did the assessee abide by these arrangements?
9. When was the last recovery made and how? (i.e. was the amount collected through coercive processes or was it paid voluntarily by the assessee?)
10. What were the steps taken for the recovery of the balance of demand from the date of last recovery? If coercive proceedings were taken, please give results achieved, in chronological order with dates?
11. Are there reasons to believe that the assessee is a benamidar of some other solvent persons? If so, kindly give particulars of such persons
12. Are there any assets, whether transferred by the assessee to his close relations, benamidars, trust, etc or acquired by them out of assessee's fund, which could be taken into account for the purpose of recovery proceedings?
13. What are the sources of the income of the assessee (or of his legal representatives and children) at present?
14. What was the total value of the assessee's assets as at the end of the previous year for the last assessment year for which write-off is proposed? What is the explanation for the subsequent loss of assets or determination in their value (i.e. capital loss not allowed in I.T. assessments like loss in speculation business, heavy bad debts, normal household expenses and any extraordinary expenses etc.). Please analyse the loss of assets claimed, indicating the nature of each assets and offer comments on the acceptability of each losses and/or determination in the value of each asset.
15. Any other remarks

Assessing Officer

Forwarded to the C.I.T. with the following comments:

.....
.....
.....
.....

JC/ADDL.COMMISSIONER

Commissioner's Comments :

1. Reg. Item 5 – Have the assessments been properly made; if not, is any action now possible or necessary?

2. Reg. Item 11 and 12 – Is it possible to effect recovery from any connected persons either by starting fresh assessment proceedings or through coercive processes for recovery (including suits in Civil Courts)?
3. Reg. 13 and 14 – Is the explanation acceptable, and are you satisfied that there are no substantial assets of the assessee from which recovery can be affected?
4. General Comments.

Commissioner of Income Tax

Annexure-II

PROFORMA OF THE ORDER TO BE PASSED BY THE C.I.T. WRITING OFF THE IRRECOVERABLE TAX ARREARS

Order No.

Date of Order

Sanction is hereby accorded to the write-off of arrear demand as specified below in the following cases:

| | | | |
|-------|----------------------------------|--------------------|--------------------|
| (i) | Name and address of the assessee | | |
| (ii) | P.A. No./G.I.R. No. | | |
| (iii) | Status | | |
| (iv) | Assessment year | Demand Outstanding | Amount written off |
| | (i) | (ii) | (iii) |

The above write off proposal was approved by the Zonal Committee/Local Committee consisting ofin its meeting held onShri.....was the convenor.

The above write off will not lead to release or waiver by the Government of its claim but will merely enable the tax arrears to be written off in the departmental books. The Government will have the right at any time during the next 30 (thirty) years counting from the date of its claim to recover the amount if it appears to the Govt. that the defaulter has assets or means to pay.

(Signature of the competent authority)

Copy forwarded to:

- (i) Secretary, Central Board of Direct Taxes, New Delhi;
- (ii) DCIT/Addl. CIT concerned;
- (iii) Assessing Officer concerned; and
- (iv) Accountant General concerned.

(The copy of the order will be endorsed to Accountant General concerned only if the write-off order involves income-tax demands of Rs.10,000 and above).

NOTE: On the same lines, orders for write-off may be passed by the ITO and JC/Addl. CIT by suitably modifying the proforma of this order.

FORM – A

Re: Petition for scaling down of arrear demand in the case of

1. Full name and address of the assessee (with PAN No. and status)
2. What are the assessment years covered by the assessee's petition?
3. What is the nature and quantum of present outstanding demands for each of the assessment years referred to in item 2 separately?
4. What was the returned income, assessed income and a tax demand in respect of these years? (in this connection please mention the section under the assessment and date of service of notice of demands).
5. What is the nature and quantum of the additions made in the assessment years under consideration?
6. Did the assessee contest these assessments in appeal, revision or reference? If so, with what results?
7. Where an order e.g. rectification, appeal, revision, reference resulting in increase or decrease of demand for any assessment year has been passed, has effect been given to it?
If no, will the quantum shown in item 3 require any consequential changes?
8. Was the assessee granted instalments for payment of tax u/s 220(3), postponement u/s 220(6) in respect of the demand raised for these years? If so, to what extent did the assessee abide by this arrangement?
9. When was the last recovery made and how? (i.e. was the amount collected through coercive process or was it paid voluntarily by the assessee?)
10. What were the steps taken for recovery of the balance of demand from the date of last recovery? If coercive proceedings were taken please give details of the various steps taken and results achieved, in chronological order with dates.
11. Is the outstanding demand referred to in item 3 covered by a recovery certificate? If so, what action was taken and what result was achieved by the T.R.O. to date? Has he certified that the outstanding demand is irrecoverable? If so, on what grounds?
12. Are there reasons to believe that the assessee is a benamidar of some other solvent person? If so, kindly give full particulars.
13. (a) What are the sources of income of the assessee at present?
(b) Please state the position regarding the returned income, assessed income and demand raised with dates (if any) in respect of the assessment year for which this report is made and three preceding assessment years.
(c) Are there any demands outstanding in respect of these years and is any portion of this in dispute?
14. Has the assessee filed an affidavit regarding assets and liabilities standing in the names of his wife and children? If not, the same should be obtained and examined.
15. What is the nature and clause of the assets disclosed by the assessee in his affidavit for purposes of settlement? Is the value shown acceptable? If not. What is the fair value of these assets? Are the liabilities shown genuine? If not, give reasons.
16. Is there any satisfactory reconciliation between the income assessed and the assets now disclosed for the purpose of settlement?
17. Are there any assets other than those shown in the affidavits, whether transferred by the assessee to his close relations, benamidar trusts etc., or

- acquired by them out of his funds, which could be taken into account for judging his capacity to pay tax?
18. What is the amount now offered by the assessee in full settlement and the terms offered by him in regard to instalments, interest on outstanding balance and security for payments?
19. Any other remarks.

Assessing Officer

Forwarded to the Commissioner of Income Tax for following comments:

Commissioner's Comments:-

1. Re: Item 5 – Have the assessments been properly made; if not, is any action now possible or necessary?
2. Re: Item 12 & 17 – Is it possible to effect recovery from any connected persons, either by starting fresh assessment proceedings or through processes for recovery (including suits in Civil Courts)?
3. Re: Item 13-16 – Are you satisfied that the position stated here is correct? Are there no other substantial assets of the assessee from which recovery can be effected?
4. Re: Item 18 – Are you satisfied that the amount and terms offered are reasonable?
5. General comments:

Commissioner of Income tax

Annexure-IV

Register of Irrecoverable Demand

| S.No | D&CR No. of the outstanding year of demand write off | Name & PAN of the assessee | Whether company or non-company case | Asst. year | Nature of demand (i.e. interest, penalty, etc. | Amount of tax, |
|--|--|---|--|--|--|---|
| 7 | 1 | 2 | 3 | 4 | 5 | 6 |
| <hr/> | | | | | | |
| <hr/> | | | | | | |
| cases or scaling the steps recovered monthly | Date Remarks, (in partial of cre- ation down of demand, of demand taken of the | Amount (in partial written off (in- dicate yearwise and against the balance each of the outstanding demand and strike total at the end of each case). | Balance demand outstanding, if any, (in case of partial write off or scaling demand i.e. (7-9) | Order No. Date and the desi- gnation of the authority i.e. ITO/ IAC/CIT passing order of given on the write off first page of the Register | Reasons for writing off the demand indicate by using appropriate leg – I(a) to V of Appendix A at six- intervals). | write off cases of demand indicate appro- demand and the amount |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | 8 | 9 | 10 | 11 | 12 | 13 |

Annexure-V

Proforma of the quarterly statement regarding the amount written off

by the Addl CIT/JC/AC/ITOs referred to in the

Board' Letter F.No.385/85/75-IT(B) dated 31/7/1976

| Name & PAN OR written (if available) | Amount taken for | Steps, in brief in brief, off | Reasons recovery of the amount written off | Remarks for writing off the amount | Address GIR | NO |
|--|---------------------|-------------------------------------|---|---|-------------|----|
| 1 | 2 | 3 | 4 | 5 | 6 | |

Where the amount is written off under the ad-hoc procedure prescribed under Board's Instruction No.929 (F.N.375/2/76-ITB dated 4.3.1976), the address of the assessee may not be available. In such a case a note to the effect that the amount is written of under the ad-hoc procedure may be given under the Remarks column.

Annexure-VI**STATEMENT**

Remission or abandonment of claims to revenue –
Annual Statement for the 19

INCOME TAX

| | Companies | | Non-Companies | | Total |
|---|-----------|---------------|---------------|---------------|-------|
| | No. | Amount Rs. | No. | Amount Rs. | Rs. |
| I. (a) Assessee having died leaving Behind no assets or have become insolvent | X | X | | | |
| (b) Companies which have gone into liquidation or are defunct | | | X | X | |
| Total (a) and (b) | | | | | |
| II. Assessee being untraceable | | | | | |
| III. Assessee having left India | | | | | |
| IV. Other reasons: | | | | | |
| (1) Assessee who are alive but have not attachable assets | | X | X | | |
| (2) Companies having no attachable assets | | | | X | X |
| (3) Amounts being petty, etc. | | | | | |
| (4) Amount written off as a result of scaling down. | | | | | |
| Total of IV. | | | | | |
| V. Amounts written off on grounds of equity or as a matter of international courtesy. | | | | | |
| GRAND TOTAL | | | | | |

N.B. Information in columns marked X would be nil.

PROFORMA

Half-yearly report for the period ending showing the progress of write-off of the amount kept alive in cases of partial write-off.

- A. Cases in which a part of arrears was kept alive for future recoveries remaining outstanding as the beginning of the year :-
(i) No. of cases
(ii) Amount kept alive
- B. Cases in which a part of arrears was kept alive for future recovery during the half-year:

(i) No. of cases

(ii) Amount kept alive
- C. Total

(i) No. of cases

(ii) Amount
- D. Cases out of (C) above in which recoveries were made by end of the half-year

(i) No. of cases

(ii) Amount recovered
- E. Cases out of (C) above in which demands were written off upto the end of the half-year

(i) No. of cases

(ii) Amount written off.
- F. Cases out of (C) above in which the demands are outstanding as at end of the half-year

- (i) No. of cases
- (ii) Amount outstanding

G. Cases out of (F) above, names of the cases with outstanding demand of Rs.50,000 and above in each case and the steps taken for recovery with the results achieved.

Commissioner of Income Tax

Chapter- 14

ACCOUNTING PROCEDURE

1.1 While assessment and collection of direct taxes important, it is equally important that they get accounted for accurately and promptly. Direct taxes are collected all over the country through a large network of about 20,000 branches of authorised banks. They are accounted for by various Zonal Accounts Offices situated in different Regions in the country. Simultaneously, the banks send the challans and the related documents to the Central Treasury Unit (CTU) of the department which accounts for the same and also generates reports needed to enable Assessing Officers to give due credit to the taxpayers for the tax payments made by them. Subsequently the accounts made by the CTU are reconciled with those of the ZAO. This chapter discusses the accounting procedures followed by these two bodies, the ZAO and the CTU.

PART - A : ACCOUNTING PROCEDURE - ZAO

2. Organisational setup

2.1 In pursuance to the Government of India decision to departmentalise the work of receipt accounting, the need arose for a new system for accounting of tax receipts and refunds in the Income-tax department. Prior to 1st April 1977, accounts of direct tax receipts and refunds were kept by the Accountant General concerned in each state. From 1st April 1977 onwards, however, all work relating to accounting of direct taxes receipts and refunds has been taken over by the Central Board of Direct Taxes. The organisational structure of the accounts wing in the Central Board of Direct Taxes is as follows:-

Finance Secretary - chief accounting authority
Financial Adviser Department of Revenue
CBDT

Principal CCA is the (apex authority for tax accounting). His Main functions are : -

- a. accounting of all receipts and registers
- b. accounting of all expenditures
- c. internal audit of tax accounting by the Income-tax department and banks which collect direct taxes
- d. monitoring and overseeing of overall banking operations with regard to direct tax collections, accounting and reconciliation
- e. rendering financial and technical advice to the Ministry of Finance in matters relating to collection, accounting, remittance and reconciliation of direct taxes

He carries out these functions through 24 ZAOs and other officers all over the country.

2.2 The ZAO-wise names of the centres where the receipts of direct taxes are accounted for are given in the "Directory of the bank branches authorised for direct tax receipts and refunds work" published by the Principal CCA, CBDT.

2.3 The revised procedure introduced with effect from 1st October 1988 eliminated the system of focal point banks and link branches. In the revised procedure each bank has a nodal branch at the headquarters of the ZAO.

3. Procedure for acceptance of taxes at the receiving branches

3.1 An assessee may pay direct taxes at any authorised branch of the nominated bank either in cash or by a cheque/draft drawn on the same bank or another bank/branch at the same centre where the payment is made. The payment of tax by outstation cheques/drafts can also be made at the offices of RBI and SBI or its associates conducting Government business. It should in all cases be accompanied by the prescribed challan.

3.2 According to the instructions issued to all the banks by the Reserve Bank of India, while accepting the payment, the receiving clerk or teller of the receiving branch will have to check up the following points :-

- a. the challan form has been filled in properly and the major head of account to which the amount is to be accounted /credited is correctly recorded therein;
- b. details of the name and address of the assessee, his status, assessment year and ITO Ward or Circle where he is assessed are properly filled in. The nature and type of payment and the amount should be written correctly both in words and figures.
- c. the Permanent Account Number (PAN) has been quoted in the challan at the prescribed place. U/s 139 A (5) (b) of the Act, quoting of PAN is mandatory. Therefore, the designated banks accepting tax payment should ensure that the challans for payment are accepted only when PAN is quoted in the challan. However, where the taxpayer indicates that he has already applied for allotment of PAN but has not yet been allotted the same, the tax payment challans may be accepted by the bank provided the tax payer produces a copy of the PAN application already filed by him or gives a letter to that effect. Such challans should be forwarded to the computer centre without detaching the copy of the PAN application form or the letter submitted by him.

3.3 The branches should not refuse to accept challans on flimsy grounds e.g., that the staff is inadequate; the tax payer has no account with the branch; the taxpayer is not a resident of the area of operation of the branch; the amount is tendered in small denomination notes; the payment is not made by means of cheques, etc. When, however, a challan is refused for some valid reason, the same should be intimated to its tenderer.

3.4 After scrutinising the challan and satisfying himself that the amount of cash, cheque or draft tendered agrees with the amount shown in the challan, the receiving teller or counter clerk of the branch will issue a paper token to the assessee to facilitate delivery of the receipted challan to him. In the case of challans deposited with a cheque or draft, the receipted challans will be issued only on realisation of the amount. Hence, the counter clerk will indicate on the token the date on which the receipted copies of the challan will be available.

3.5 The following challan forms are prescribed for payment of various direct taxes: -

| <u>S.No.</u> | <u>Type of Tax</u> | <u>Challan Form to be used</u> |
|--------------|--|---|
| 1. | Tax on Companies | ITNS 268 (0020 Corporation Tax) |
| 2. | Tax Deducted at Source from Companies | ITNS 269 (0020 Corporation Tax) |
| 3. | Income Tax | ITNS 270 (0021 Tax on Income other than |

| | | |
|----|---|--|
| | | Corporation Tax) |
| 4. | Income Tax deducted at source from persons other than companies | ITNS 271 (0021 Tax on Income other than Corporation Tax) |
| 5. | Wealth Tax | WTNS 20 (0032 Wealth Tax) |
| 6. | Gift Tax | GTNS 38 (0033 Gift Tax) |
| 7. | Interest Tax | ITNS 272 (0024 Interest Tax) |
| 8. | Expenditure Tax | ITNS 273 (0028 Other taxes on income & expenditure |

3.6 The branches should display a notice "Direct tax payments are accepted here" at a prominent place within the branch's premises.

4. Challans tendered with cheque/draft

4.1 A challan tendered with a cheque/draft will be branded with a 'double date stamp' to indicate the date of tender of the instrument as well as the date of realisation. It is possible that some branches might be following the practice of branding the challans with an inward date stamp as soon as the challans are tendered over the counter. In that case the double date stamp may not be necessary. However, it will be ensured that the inward date stamp is invariably branded on all the copies.

4.2 The cheque/draft will be sent for realisation and challans for scrolling. On realisation the date thereof will be indicated on the double date stamp or in the space in the challan as the case may be. After signing the challan for having received the amount, the tenderer's copies will be returned to the tenderer against the surrender of the token.

4.2.1 A running serial number will be given to all the challans received on each day. So far as any individual challan is concerned, all copies of the same will be numbered simultaneously on the right hand top corner (the same number appearing on all the three/four copies of a set) to facilitate scrolling afterwards.

4.2.2 Where the challan has four parts, the assessee will be supplied two receipted copies instead of one.

4.2.3 Copies of the challans tendered along with cash/cheque/draft payable at the same branch will be returned to the tenderer duly receipted during the course of the day except when such transactions are large in number. In that case, they should be returned not later than the working day following the date of tender. The challans tendered with cheques/drafts drawn on a different branch of the same bank or any other bank situated at the same centre, will be returned duly receipted not later than the working day following the day fixed under the rules of 'Local Bankers Clearing House' for return of unpaid instruments of any day's clearing.

5. Preparation of scrolls

5.1 The receiving branch will prepare scrolls on a daily basis. A running serial number extending to a financial year (1st April to 31st March) will be given to the scroll, separate serial number being given for scrolls relating to each type of tax and the serial number so given will be prefixed by the appropriate abbreviation of the type of tax concerned e.g.

Income Tax (IT), Corporation Tax (CT), etc. The branch will also prepare a summary of receipts. Thereafter, the scrolls/challans and summary will be made into sets as under :-

- a. One set will contain the original of the receipts scroll, each scroll, being accompanied by the relative challans arranged in the same serial order in which they are entered in the scrolls. This set is intended for the designated officer in Charge of the CTU/Computer Centre.
- b. A second set similarly made will contain the duplicate copies intended for Zonal Accounts Officers.
- c. A third set will contain the triplicate copies of the scrolls (without challans) and also the summary for the record of the nodal branch.

5.2 At the beginning of the next working day, the receiving branch will forward all the 3 sets mentioned above to the nodal branch (situated at the ZAO Centre).

6. Procedure for payment of income tax refund orders (ITROs)

6.1 Direct tax refund work is entrusted to only one branch either of RBI or SBI or an associated Bank of SBI at an ITO centre / a district. The Refund Orders will be presented to the branch by the assessee for payment in cash or credit to his account with the same branch. Alternatively, it might be received through clearing. The specimen signatures of the officers of the Income-tax department who are authorised to draw refund orders will be sent to the branches concerned in advance by the Income-tax authorities. The specimen signature will be duly certified by an officer of the Income-tax department whose specimen signature is already on record with the branch. Any change in the authorised official will be advised to the branch concerned immediately. The specimen signature of the relieving officer will be attested by the relieved officer. While passing the refund orders for payment, apart from the precautions usually exercised by the banks in connection with payment of negotiable instruments, the following points will be noted :-

- a. In the case of refunds of amounts below Rs.1,000/-, the Income-tax authorities will issue to the assessee two foils of the relative refund order and the payment in respect of such refund orders will be made on presentation of both the copies.
- b. In the case of refund orders, exceeding amounts of Rs.1,000/-, the Assessing officer will issue one foil of the order to the assessee. Simultaneously, the concerned officer will send to the paying branch a refund advice in duplicate. The number on the ITRO and the refund advice will be the same. The payment of the refund order will be made only on the strength of the refund advice received in the branch.
- c. The payee is required to put his signature in the space provided for 'Claimants signature' on the reverse of the Income Tax Refund Order (ITRO). This is applicable in cases where ITROs are being issued in the form of cheques under Non-MICR (Magnetic Ink Character Recognition) technology i.e. the old conventional form. However, at the places where ITROs are being issued in the form of cheques under the MICR Technology for merchandised processing of cheques for clearance (which is presently prevalent in the four metropolitan cities of Delhi, Mumbai, Calcutta and Chennai) no such discharge by the payee on reverse of the ITROs is required.

6.2 As in the case of receipts, refunds are required to be classified by the paying branch according to the type of tax under which the refunds are made. Separate major head wise payment registers will be maintained in respect of payment of ITROs.

7. Preparation of payment (refund) scrolls

7.1 The procedure for preparation of payment scrolls will be the same as applicable to receipts scrolls.

7.2 The scrolls will be made into sets similar to the sets relating to receipts except that instead of the challans, the paid refund orders/refund advices will accompany the scrolls. Besides, the set meant for the Designated Officer in charge of the CTU/ Computer Centre will not contain any copy of refund order in case of refunds for amounts exceeding Rs.1,000/- as only one foil is issued by the Assessing officer to the taxpayer which is to be forwarded to the ZAO. In respect of refunds of Rs.1,000/- and above, the paying branch will attach one copy of the advice to the set of payment (refund) scroll meant for the designated officer and retain the other for its record. The scrolls etc. will be sent to the nodal branch along with the payment receipts scrolls.

7.3 If the nodal branch is not locally situated, all the above documents (receipt/refund scrolls etc.), should invariably be sent by registered post .

8. Loss of challans by the assesseees

8.1 In the event of loss of receipted challans by the depositors, the bank branches may, on receipt of a specific request in writing for issue of a certificate of credit from assesseees, issue the same to the depositor based on their record after satisfying themselves about the bonafides of the applicant in each case. A fee of Rs.20/- (vide circular No.64 GA.NB. No. 345/42.01.001/97-98 dated 12.1.1998) per certificate may be charged to the depositor. The penalty will however be waived in cases where the challans are lost in postal transit or lost/ misplaced at the branch itself.

9. Functions of nodal branch

9.1 Nodal branch will be responsible for the prompt and accurate accounting of the collections/refunds reported to it daily by all the receiving branches under the jurisdiction of the concerned zone of the Income-tax department (including its own receipts). It will also be responsible for prompt remittance of the collections of all the receiving branches (including its own) linked to the Government account at RBI, CAS, Nagpur. It will also be responsible for reconciliation of figures with the ZAO.

9.2 On receipt of 3 sets of scrolls and challans/paid instruments etc. as indicated above, the nodal branch will take the following action on a day to day basis:-

- a. It will consolidate the copies of the scrolls (without challans) received from all the branches including its own by stitching the scrolls together D.O. wise and major head wise and retain one stitched set (copy) for its record.
- b. It will consolidate and stitch, Designated Officer wise (in some zones there may be two or more DOs) and major head wise, the remaining two copies of scrolls/challans received from the receiving branches (including its own).
- c. It will include these transactions in its daily main scrolls to be prepared in triplicate-D.O wise and major head wise. These should be given a running serial number extending to a financial year. It will forward one consolidated set of scrolls (including a copy of main scroll) together with the challans to the local ZAO concerned on day to day basis. Another similar set containing the challans marked 'original' and intended for the Income-tax department may be forwarded to the concerned Designated Officers daily.

- d. The nodal branch will also prepare in triplicate, separate main scrolls for payments (i.e. refunds), D.O. wise and major head wise and forward them along with the set containing payment scrolls, the advice notes (for refunds of Rs.1,000/- and above) and paid I.T.R.Os (upto Rs.999/-) to the D.O.s and the other set containing payments scrolls and the paid I.T.R.Os (in both the cases viz., for refunds up to Rs.999/- and for Rs.1,000/- and above) to the ZAO. One copy of the advice note will be retained by the paying branch.
- e. If the Designated Officer is not locally situated, (in cases where two or more DOs are there in a zone) all the above documents should invariably be sent by registered post.
- f. During first 25 days in April every year, the nodal branches will prepare two separate sets of scrolls - one pertaining to the March transactions which means cheques / drafts / ITROs tendered and cleared upto 31st March by receiving branches and scrolls of the same sent to the nodal branch subsequent to 31st March but before 25th April will be scrolled by nodal branch as March residual account (They will intimate the link branch at Nagpur for inclusion of these transactions as March transactions. The nodal branches will send another scroll for April transactions prominently indicating the month of account. Any cheque/draft tendered on or before 31st March and realised on or after 1st April will be treated as part of the April transactions of the next year.
- g. The nodal branch will pass on the consolidated amount accounted by it to its link cell at Nagpur on day to day basis (Please refer to Annexure-I for details regarding flow of documents / remittances).

10. Crediting the tax collected to government account

10.1 The nodal branch acts as a pooling centre for all the receiving branches coming under its control and it is responsible for reporting of the transactions along with all the related documents i.e. Challans and scrolls to the ZAO and the Income-tax department as well as to its link cell at Nagpur for crediting the amount collected to RBI (Central Accounting section or CAS), Nagpur.

10.2 The nodal branch will prepare a daily memo and send it on a daily basis to its link cell at Nagpur (GAD, Mumbai in case of SBI) which in turn will make a daily settlement with RBI, CAS, Nagpur.

10.3 The link cell of the bank at Nagpur will monitor the daily receipts and check the accuracy of the daily memos received from the nodal branches. The link cell will then pass on the daily memos to the CAS, RBI, Nagpur.

10.4 The nodal branches of the banks will carry out monthly reconciliation with ZAOs of the amount settled by them with their link cell at Nagpur. On the basis of their records the ZAOs will verify of the statements received from the nodal branches both major head wise and nodal bank wise. In case of any discrepancy the nodal branch will carry out the corrections immediately and adjust the difference in the amount already credited / debited to the CBDT's account through its link cell at Nagpur under information to the ZAO.

10.5 For the purpose of final reconciliation of the transactions with concerned ZAOs and the link Cell, the CAS, RBI, Nagpur will generate a monthly statement and furnish the same to ZAO and the link cell of the banks. RBI, CAS, Nagpur will furnish by 20th of the following month, a monthly analysis indicating major head wise receipts / refunds etc to the CCA, CBDT.

11. Payment of interest on delayed transfer of tax collections

11.1 The tax collections effected by the designated branches of the nationalised banks have to be credited to the Government account, promptly. The maximum number of days allowed for crediting tax collections to Government account at CAS Nagpur are as under : -

| | <u>No. of Days</u> |
|---|---|
| i) Collections by local branches (i.e. at places where the nodal branch and ZAO are situated and its agglomerate. | 5 days (including Sundays and Holidays) |
| ii) Collections by out stations branches | 9 days |

11.2 If there is any delay beyond the period prescribed above, the banks are liable to be charged penal interest. The interest for the defaults as mentioned above, is to be quantified and collected from the defaulting bank by the ZAO. There is a detailed specific procedure prescribed by RBI for quantifying the interest and collecting the same.

12. Accounting of march transactions

12.1 RBI, Central Office, Mumbai has issued special instructions to all banks collecting direct taxes regarding the procedure to be adopted in accounting the March transactions.

12.2 The nodal banks will be receiving scrolls relating to March of the previous year in April of the current year. In order to account for the entire collections of March in the same financial year the nodal banks have to follow the following procedure during the month of April.

12.3 The nodal banks have to prepare two sets of separate scrolls - one pertaining to March residual collections and another for April transactions during the first 25 days in April. They should ensure that all the tax collections made by the receiving branches upto 31st of March are accounted as “March residual transactions” and should not be mixed up with the transactions of April which fall in the financial year. The main scrolls for March transactions prepared from 1st to 25th April are to be distinctly marked as “March residual”.

12.4 It may also be noted that all the cheques / amount realized on or before 31st March should be treated as transactions relating to the current financial year and should be accounted for as such under the head “March or March residual transactions” in the next financial year.

12.5 While reporting to their link cell in Nagpur the Nodal banks should send two sets of figures distinctly showing March residual and April transactions separately upto 25th April.

12.6 The date wise monthly statements should also be prepared in two sets, one pertaining to March residual transactions and another relating to April transactions.

Other important points

13. Special arrangements during March every year

13.1 The branches should follow the procedure explained in the earlier paragraphs meticulously and ensure that the collections made towards direct taxes are passed on promptly for credit to Government account through the nodal branch / link cell. However, during the second fortnight for March every year, wherever the receiving branches and nodal branch are situated locally, a special messenger system should be introduced by the receiving branches. All efforts may also be made to provide the collection figures on daily basis to the ZAO during the second fortnight of June, September and December every year, for onward transmission to the Government for monitoring, estimates etc.

14. Formation of monitoring committee-holding of periodical meetings.

14.1 For the smooth functioning of the revised scheme for collection and accounting of direct taxes by Public Sector Banks (PSBs), the monitoring committees consisting of officials from nodal banks/local authorities of the banks ZAO and I.T. Department will be formed at every Zonal Accounts Office centre. The committee will meet once half yearly and discuss various issues connected with direct tax work such as accounting, scrolling, reporting, remittance and reconciliation of direct taxes etc. and make efforts to sort out the problems at its own level. Further, annually there will be a special monitoring committee meeting in which very senior officials from CBDT, I.T. Department and banks will participate and redress the various problems being faced by the banks, ZAOs and I.T. Department in the fields. Banks will ensure that the necessary follow up actions are taken on the minutes of such meetings.

15. Redressal of public grievances

15.1 Each PSB should have an effective procedure for dealing with public complaints at the branches rendering service to Government departments or members of the public as prescribed, from time to time.

16. Use of magnetic media for expeditious transmission of tax payments information by banks to the government

16.1 During the year 2001, a new procedure for submission of challan data on magnetic media by the banks has been introduced. In addition to the procedure prescribed for transmission of challans and scrolls by nodal banks to the CTU and ZAO, they are now required to send in magnetic media the following core data: -

- a. Branch Code (Numeric 9)
- b. Major head code (Numeric 4)
- c. Serial number of challan (Numeric 4)
- d. Name of the assessee (Character,130)
- e. Amount of the challan (Numeric 15, in paise)
- f. PAN under the new series (TAN in the case of TDS case of challan) if quoted in the challan (or) Assessing Officer code or AO description (Ward/ Circle etc) (Character, 20) if mentioned in the challan.
- g. Date of transaction (i.e., date of receipt of cash/ realisation of cheque /DD)
- h. Date of daily main scroll (of the nodal branch).

16.2 The banks are required to capture the above data from the data as available in the challans. Floppies containing these data are required to be sent by each of the nodal banks, to the CTU as also to the ZAO alongwith the daily scrolls. This procedure was introduced on an experimental basis at Mumbai with reference to SBI w.e.f 1.04.2001. Later the scheme has

been extended to other centres like Chennai, Delhi and Calcutta. It is expected to be extended to all other centres shortly.

16.3 Receipts of such data on magnetic media will simplify, to some extent, the work of processing of challans/refund vouchers at the CTU.

PART - B : ACCOUNTING PROCEDURES (CENTRAL TREASURY UNIT & TAX ACCOUNTING SYSTEM)

17.1 In the following paragraphs accounting of tax collected by the CTU, processing of challans on computers by the Regional Computer Centres (RCC), generation of daily collection registers (referred to as cash book) and other reports are discussed.

18. Processing of challans at CTU under TAS

18.1 The accounting of direct tax collections is being carried out at 36 computer centres of the Income-tax department using the Tax Accounting System (TAS) software. The present procedure for accounting of direct tax collections has made a radical departure from the previous procedure in that it has dispensed with the need for transmission of the challans to the Assessing Officers. Under the present procedure, credit for the tax payment will be given by the Assessing Officer on the basis of the authenticated daily collection report generated by the Computer Centre.

18.2 The challans will be centrally stored at the Computer Centre and will not be distributed among the Assessing Officers. Credit will be given on the basis of the authenticated daily collection register prepared by the Computer Centre. The revised procedure is applicable only to the challans and refund paid vouchers received from the banks by the department. The copies of the challans furnished by the assessee along with the return of income will continue to remain in the assessment records. Centralised processing of challans has come into place with effect from 01.04.1992 (vide F. No. 385/78 91- IT(B)/dt.24.03.1992.

19. Central Treasury Unit

19.1 The nodal branches of the banks receiving the challans would send them directly to the concerned Computer Centre. The Central Treasury Unit (CTU) comes under the Computer Centre and an Assessing Officer will be nominated as the Designated Officer (DO) for the entire centre. The challans together with the scrolls etc. will be received by the DO of the CTU and it shall be the responsibility of the CTU to ensure the prompt receipt of the challans/vouchers together with other related documents, from the banks in time. The DO will liaison with the banks if there are any delays in transmission of challans or discrepancies in the challans and scrolls. The main functions of the CTU are explained in detail as per the workflow chart in Annexure-II.

19.2 After receipt of the challans and scroll, the officials in CTU shall scrutinise the challans and scrolls to ensure the following:

19.2.1 Physical tally of the challans with the total number of challans as per scroll should be made.

19.2.2 Identification of the missing and surplus challans. The surplus challans may be detached and kept in a separate file till they are accounted for by the Bank.

19.2.3 Intimation to the bank about the missing and surplus challans and lack of continuity of serial numbers of main scroll etc.,

19.2.4 Detaching of challans not relating to direct taxes and sending them back to the bank.

19.3 Apart from the above, the main scrolls should be entered in the bank scroll register. A separate bank scroll register should be maintained for each bank.

19.4 The CTU marks the CTU date on the daily summary. The summary, Main Scroll and branch scroll are to be coded on the basis of bank code and major head.

20. Tagging

20.1 The official responsible for tagging (Annexure-III) should ensure the receipt of challans on daily basis from the bank and should ensure that the challans received are physically tallied with the number shown in the scroll. Any surplus or missing challan should be immediately brought to the notice of the DO for necessary action with the concerned banks. Normally, the bundles of challans and scrolls will not be opened or disturbed. They would be processed as they are without being split into different bundles. However, where the bundles are big, splitting of challan bundles into tags of approximately 200 challans should be done so that easy handling of challans is ensured at subsequent stages. It should also be ensured that the challans are properly secured so that they do not come out during subsequent processings.

21. Coding of challans

21.1 After the challans have been properly tagged, the scrolls and challans will be coded in the CTU as under : -

| | <u>Scroll Coding</u> | <u>Challan Coding</u> |
|------|----------------------|------------------------|
| i. | Batch | i. Batch |
| ii. | Bank | ii. Bank |
| iii. | Total Challans | iii. Assessing Officer |
| iv. | Total amount | iv. Major Head |
| | | v. Minor Head |
| | | vi. Subhead |
| | | vii. Status |

21.2 The structure of the codes is as under :

i. Batch Code : A scroll and its accompanying challans constitute a batch and both have the same batch number. The batch number would consist of seven digits; The first digit denotes the bank, the second digit denotes the month, the third and fourth digit denotes the date and the last three digits denote the running serial number of the scroll for a day given by the CTU.

ii. Bank Branch Code : It consists of 5 digits. The last four digits are given by the bank to denote the branch of the bank. The first digit is given by the department to distinguish the banks such as a,b,c,d... etc. This will be the same as the first character of the batch code.

iii. Assessing Officer Code : It consists of six digits to denote the Assessing Officer, the Joint Commissioner and also the Commissioner. If it is not possible to identify the Assessing Officer, a code meant for suspense file may be given. Similarly codes will be given for outstation charges.

iv. Similarly there are codes for major heads, minor heads, sub-heads and status. Even if payments are made in wrong challans, the CTU should make proper coding

prominently. After the scrolls and challans are coded, they will be sent to the data entry section.

22. Tax Accounting System (TAS) - scope and significance

22.1 After the challans are coded further processing of the challan is carried out through computers. The challans are entered into the computer through a software known as TAS. TAS is one of the ITD applications in use by the Income tax department under its comprehensive computerisation plan. TAS is an on-line, menu driven and Windows '95 based software. The screens are user-friendly, easy to use, self-explanatory and supported by messages. These screens can be used to perform different functions like data entry, query execution and report generation. The main functions that are carried out in TAS are discussed in the following paragraphs:

23. Entry of main scroll and branch scroll

23.1 First, the data entry operator will enter the daily summary followed by the main scroll and branch scroll. Only after this, will he enter the batch of challans.

23.1.1 In the present system of accounting, each challan/ paid refund voucher shall go through a cycle of five operations before being declared clean and ready for posting.

24.1 First entry : Firstly all the fields of the challans/ paid refund vouchers of a batch will be entered by an operator. At this stage, the system shall capture the operator's identity with each challan and the time stamp with each batch. After completing the first entry of the batch, the operator shall not have access to the same batch. The system ensures that the operator opens only one batch at a time for data entry.

24.2 Second entry : The batch, after the first entry is over, will be handed over to a second operator who will not be the same person who made the first entry. Whereas at the first entry stage, all the fields of information are captured on the system, at the second entry level, the operator will enter the PAN and amount for all the challans. If PAN is not there, name and Assessing Officer code shall be entered. The TAS provides for second data entry of certain specified fields of information in order to ensure accuracy of the data entered. Here again, the system retains the operator's identity and time stamp at the batch level.

24.3 Mismatch of challans/ vouchers : After the second entry, the Office Superintendent will see the mismatches between the challan data entered by the two operators and will carry out modifications on both the data after physically comparing the data with the challan. The officials doing the mismatch will clear the batch once the mismatch has been completed by him in respect of that batch. The identity of the official and the time stamp will be captured by the system for each batch.

24.4 Inspector clearance : After the correction, the batch will be checked by the Inspector. The Inspector shall see on the system, all challans of Rs. 5,00,000/- to Rs. 20,00,000/- [vide TAS Instruction No. 65 dated 9-1-2003 in File No. SW/07/01/03/01/DIT(S)] and verify with the physical challans to ensure the correctness of the data entry made. If any modification is carried out by the Inspector his identity and time stamp will be captured by the system. After the Inspector has verified all the challans physically, he will give confirmation of the batch. After giving confirmation, the Inspector's identity and time stamp are captured and the Inspector shall not have any access to the batch again. But the Inspector can reopen the batch for data entry and subsequent operations without loss of data already captured.

24.5 DO clearance : After the Inspector's check, the batch will be checked by the Designated Officer (DO). The DO shall see on the system all challans above Rs.20,00,000/- [vide TAS Instruction No. 65 dated 09.01.2003 in File No. SW/07/01/03/01/DIT(S)] and verify the same physically with the challans. If he has to carry out any modification on the challan data, his identity will be stored with the challan data. After the DO has verified all the challans physically, his identity and time stamp will be captured in the system. After giving his confirmation, the DO will also not have access to the batch. However, the DO can reopen the batch for data entry and subsequent operations without any loss of data already captured. The challans are marked "clean and ready for posting" only after DO's confirmation. Then only report generation can take place.

25. Security check - inbuilt in TAS

25.1 There are four levels of inbuilt security in TAS. Four classes of users are identified for this purpose:-

- i. DO is the sole member with "Z" class.
- ii. ITI's and supervisors are "Y" class.
- iii. DEO's, the largest class will be "X" class.
- iv. The fourth are the AOs for Suspense Management and they are classified as "A" class.

25.2 The functions and responsibilities of each class of user is explained in detail in Annexure - III.

25.3 The system ensures that access is allowed to the authorised class only when needed. The user's identity and time stamp are captured and thereby complete 'audit trail' is ensured.

26. Generation of report

26.1 The supervisor will generate the following ten reports after the DO clearance is over and after the challans / vouchers are made clean and ready :-

- i. Provisional daily collection
- ii. Daily collection report
- iii. ZAO report
- iv. Simple major head wise report
- v. AO wise net collection report
- vi. CIT wise collection report
- vii. Range wise collection report
- viii. CTU wise collection report
- ix. Bank letters
- x. Challan print.

26.2 The daily collection registers will be generated in respect of each Assessing Officer separately for each of the following payments:-

- a. advance tax
- b. self- assessment tax
- c. TDS
- d. regular demand
- e. other receipts

26.3 The daily collection report will be authenticated by the DO who will sign it in full with seal.

27. Support functions

27.1 Apart from the above, TAS will carry out the following support functions:-

- i. transmission of outstation challans with outstation reports.
- ii. challan suspense resolution
- iii. incorporation of the corrections suggested by the Assessing Officers.

27.2 Letters will also be generated through the system to the banks / ZAO for reconciliation in respect of cases where there is a difference between the figures shown by the banks and the figures arrived at by totalling the challans and scrolls by the department. Please refer to Annexure-III for the details of different functions performed by different users in “TAS”.

28. Reconciliation

28.1 The collections effected and reported to the ZAO by the nodal banks are treated under the head “receipts awaiting transfer” (RAT) by the ZAO till such time he receives a detailed report from the CTU classifying the collections major head wise and Assessing Officer wise. The CTU will submit the major head wise account in the prescribed format on a regular basis to the ZAO. In turn, the CTU will receive from the ZAO a monthly statement of scrolls received by the ZAO from the nodal branches (major head wise). The CTU will verify this with reference to its registers and will return it to the ZAO in the prescribed format. In case there is a difference, it shall be reconciled by the computer cell of the CTU and necessary report sent to the ZAO. The procedure to be followed in this regard is as per the procedure for accounting of direct taxes prescribed by the CBDT.

29. Outstation challans and statements

29.1 Collections relating to the other charges will be sent to the respective charges by way of authenticated daily collection sheets. The challans will not be sent with this sheet. The collection of one charge will not be reduced or that of another charge increased in this process. The CTU receiving the collection sheet will enter the data in its system and the collections will be distributed among the AOs periodically by way of a separate daily collection report.

30. Suspense resolution

30.1 When the challans received by the CTU do not contain the correct details as to the AO to whom they belong or when challans do not contain the name/ address etc., they go to the suspense file. Apart from this, the challan particulars intimated by the AO as not pertaining to him from the DCR will also go to this ‘Suspense file’. Correction of entries should be made for these later category of challans. Likewise every effort should be made to minimise the suspense figure by distributing the collection correctly to the concerned AO.

31. Storage retrieval of challans/ paid vouchers

31.1 As already discussed the challans shall be under the custody of the Computer Centre and they will not be distributed among the AOs. They should be stored, after processing in a record room with facility for easy retrieval whenever required.

32. Functions of the Assessing Officer receiving the daily collection registers from the CTU

32.1 The CTU will send the DCR every month after processing all the challans relating to a single month vide instruction in F.No. 385/78/91-IT(3) dated 22.09.1992. On receipt of the DCR, the Assessing Officer shall scrutinise the DCR received to see that:

32.1.1 The AO code, page number and entry number and total collections are correctly entered.

32.1.2 The major head wise collections are properly reflected.

32.1.3 The Assessing Officers should bear in mind that the daily collection report is a cash book and that all its entries must be given credit with cross references.

32.1.4 The Assessing Officer will check the daily collection register and find out if any entry does not relate to him. In respect of entries that do not belong to him, the Assessing Officer will prepare a list and send it to the Computer Centre. The Assessing Officer will make suitable notings in the remarks column of the daily collection register.

32.1.5 The Computer Centre will carry out the necessary corrections. The details of the corrections made will be mentioned in the daily collection register of the subsequent date and after the normal entries of collections are mentioned, these correction entries will be mentioned, at the bottom, giving suitable cross references. The running total will accordingly be modified.

32.1.6 No tampering with the daily collection register sent by the Computer Centre should be attempted under any circumstance.

33. Use of TAS for Assessing Officers

33.1 Advise corrections on clean challans/refunds : The Assessing Officer can correct the following types of errors that have crept in during the process of data entry of tax payments/refunds :-

i. Challans relating to an Assessing Officer, but wrongly entered in the old Assessing Officer code. In such a case the challan can be viewed/claimed from the option 'Advise Correction' by giving name of the assessee and amount of challan on the query screen. The corrections made have to be cleared by the Designated Officer at RCC and once cleared the changes made are saved.

ii. PAN is not quoted on the challan but AO code is mentioned and has been entered into the system. In such cases, PAN can be entered and saved through 'Advise Correction' option and clearance by the Designated Officer at RCC.

33.1.1 Claim from suspense : While entering data, when it is not possible to relate a tax payment/refund to an AO code, it is kept in suspense. An AO can view all tax payments/refunds kept under suspense and claim those payments/refunds which relate to his/her AO code. The claim is subject to clearance by the Designated Officer at RCC. Once cleared, the tax payment/refund is accounted under the AO code of the AO who made the claim.

33.1.2 Claim missing challans/refunds : The AO can also view all the tax payments/refunds classified under 'Missing challans/refunds'. Where a tax payment/refund which relates to his/her AO code is found, he/she can populate the challan/refund, if the missing data relating to the challan/refund is available. The AO can also confirm that the tax payment/refund relates to his/her AO code. This confirmation is subject to clearance by the

Designated Officer at RCC. Once cleared, the tax payment/refund is accounted under the AO code of the AO who made the claim.

33.1.3 Query challans / refunds : The AO can make the following queries,

- i. queries relating to posting of challans in his/her AO code. The AO can verify through a TAS query whether a payment made by an assessee coming under his/her jurisdiction has been correctly entered and posted in his AO code and whether it is correctly reflected in the statement pertaining to his/her ward / circle.
- ii. the AO can ascertain the details of encashment of refunds issued by him.
- iii. the AO can, by entering a range of dates ascertain the collection/refund figure of his/her ward/circle for that period.
- iv. the details of collections on the basis of minor heads like advance tax, self assessment, TDS and regular assessment collections can be viewed by the AO for a period.

This query option is available for Addl.CIT/JCIT and the CIT of the Assessing Officer.

Apart from the above the AO can make queries to ascertain the details of :-

- a. all missing challans/refunds including those which have been claimed and cleared by the Designated Officer.
- b. query all challans/refunds for correction including those which have been corrected by AO and cleared by Designated Officer.
- c. query all challans/refunds lying in suspense.

33.1.4 It may be mentioned here that the result of the query reflected on the screen relates to challans cleared by the Designated Officer only. If for a particular period for which query is made, some challans received from the banks are yet to be cleared by the Designated Officer, such data would not be included in the results seen by the Assessing Officer on his screen.

33.1.5 Maintenance of Personal Deposit Accounts : Under the Income-tax rules, Commissioners of Income-tax are authorised to operate personal deposit accounts in Government treasuries for depositing moneys seized from persons suspected to have evaded tax. Personal deposits accounts may be authorised to be opened under the special order or permission of the Ministry or Department concerned in consultation with the Pr. C.C.A., CBDT and the Controller General of Accounts. After departmentalisation of accounts in 1976, instead of treasuries, such moneys are deposited at the focal point branches of RBI/SBI at the headquarters of the Commissioners of Income-tax. Moneys seized at the other centre are deposited by the concerned officers at the focal point branches at those centres with a request to transfer the same to the personal deposit account at the focal point branch at CIT's headquarters free of cost. The amount deposited into the personal deposit accounts is also required to be transferred to RBI, CAS, Nagpur on a day to day basis for crediting to Government Account and the amount outstanding in these accounts will only be notional balances. The focal point branch at the CIT's headquarters will send a separate scroll for such receipts directly to the Zonal Accounts Officer (ZAO) with a copy to the officer operating the personal deposit accounts.

33.1.6 Since July 1978, the Tax Recovery Officers are also allowed to maintain such accounts with focal point banks. Repayment are also made under this account on the authority of personal deposit cheques issued by the Commissioner's headquarters. For this purpose, cheque will be issued by ZAO. The focal point branch has to send a separate payment scroll for such payments along with the paid cheques to the ZAO. A copy of the scroll without the

paid cheque is sent to the officer operating the personal deposit accounts. The focal point banks maintaining the personal deposit accounts are also required to prepare at the end of every month a monthly statement including:-

- i. opening balance
- ii. total receipts
- iii. total payments; and
- iv. closing balance

33.1.7 By 5th of the following month, the focal point branches have to send one copy of the statement to the concerned account holder and three copies to the Zonal Accounts Officer.

34. Opening and operation of Personal Deposit Accounts:

34.1 In case of Tax Recovery Officer (TRO), the P.D. accounts will be opened at the branch of RBI/ SBI at the respective center where he is posted. Where there is more than one TRO at one center, specific sanction to that effect will be conveyed by the Board with the approval of the CGA through Pr. C.C.A., CBDT.

34.2 When a new account is to be opened in favour of a TRO, necessary sanction to this effect will be obtained by the concerned TRO. Thereafter the ZAO will authorise the opening of the account in the books of the concerned branch of RBI/SBI at the center at which the TRO is posted.

34.3 Moneys will be paid into these P.D. accounts accompanied by the prescribed challans. Withdrawals will be made by means of cheques drawn by the concerned account holder. It should be ensured that the withdrawals made from this accounts should not exceed the amount deposited into them. It may be noted that the amount of deposits and withdrawals are required to be adjusted daily to Government account. The balances held in P.D. Accounts at the branches are only notional balances. The delay in transferring the amounts under the P.D. accounts to the Govt. Account will attract penal interest at the same rate as in case of delayed remittance of direct tax collections to Government Account.

34.4 While passing cheques for payment from these accounts, the branches will follow the procedure laid down in this regard for passing of Government cheques in the Memorandum of Procedure relating to accounting of Government payments under the Departmentalised System of Accounts.

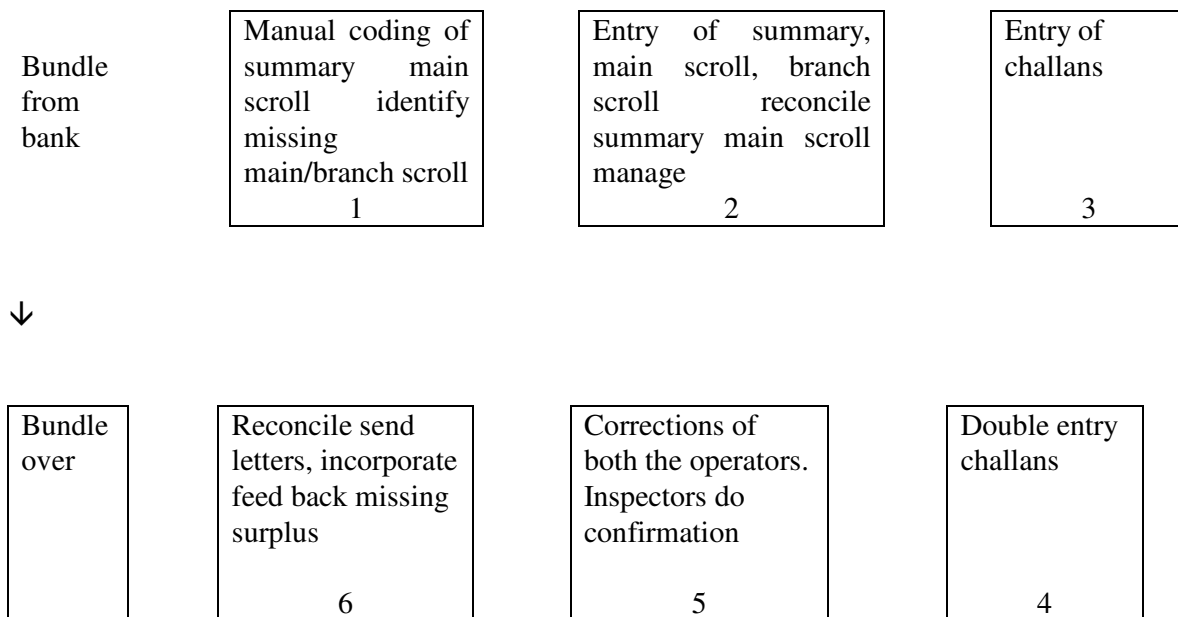
34.5 The branches will prepare receipts and payments scrolls as well as monthly statements as at present and furnish the same to the ZAO and the officer operating the accounts.

List of Annexures :-

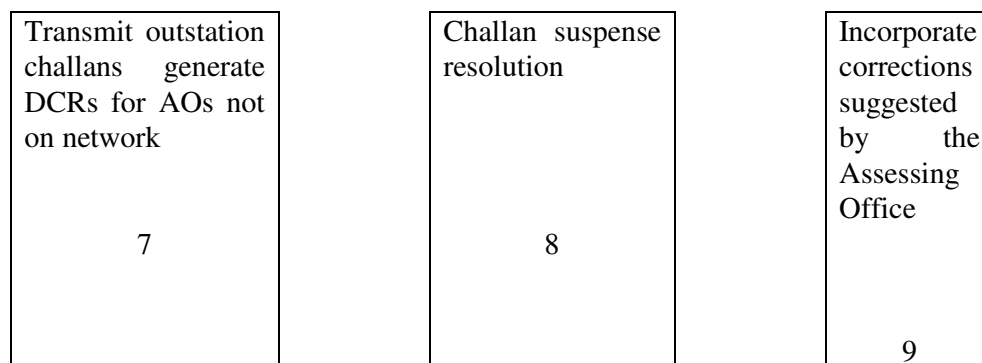
- i. Flow of Documents/Remittance
- ii. Flow Chart explaining main functions at the CTU.
- iii. Brief details of new Tax Accounting System (TAS)

Annexure - II

Flow Chart explaining main functions at the CTU



SUPPORT FUNCTIONS



Annexure - III

Brief details of new Tax Accounting System (TAS)

TAS is an on-line, menu driven and Windows'95 based software. The screened are user friendly, easy to use, self-explanatory and supported by messages. These screens can be used to perform different functions like data entry, query execution and report generation. The main functions to be performed by different users in TAS are as follows:

| <u>Activities</u> | <u>Responsibilities</u> |
|--|---|
| <u>Coding of Scrolls:</u> <ul style="list-style-type: none">♦ Receipt of challans and scrolls from the bank.♦ Mark CTU date on Daily Summary♦ Summary, Main Scroll, Branch Scroll to be coded on the basis of bank code & major head. | Persons Working in CTU (LDC/TA/Sr.TA) |
| <u>Formation of tags:</u> <ul style="list-style-type: none">♦ For a big bundle of challans, splitting of challan bundle into tags of approximately 200 challans.♦ Marking of tags (A/B/C etc.) on Branch Scroll | Persons Working in CTU (LDC/TA/Sr.TA) |
| <u>Data Entry of Scrolls:</u> <ul style="list-style-type: none">♦ Daily Summary♦ Main Scrolls under Daily Summary♦ Branch Scrolls under Main Scrolls <u>Reconciliation of Main Scrolls and Summary Scrolls:</u> <ul style="list-style-type: none">♦ Reconciliation of Main Scrolls after entry of all Branch scrolls.♦ Reconciliation of Daily Summary after entry of all Main scrolls. | Office Superintendent (Data Processing Assistant Grade 'B') (Data Processing Assistant Grade 'A') LDC/TA/Sr.TA |
| <u>Data Entry:</u> First entry of challans: <ul style="list-style-type: none">♦ Acquire a tag by operator♦ First entry of challan♦ Complete first entry of all challan in a tag.♦ Mark the tag complete♦ Tag will be ready for second entry | LDC / TA / Sr.TA |
| <u>Second Entry of challans:</u> <ul style="list-style-type: none">♦ Acquire a tag by operator♦ Second entry of challan (PAN, Name, AO code, Total Amount)♦ Complete second entry of all challan in a tag♦ Mark the tag complete.♦ Tag will be ready for mismatch correction | LDC / TA/ Sr.TA (Other than the person who did the first data entry) |

| | |
|--|---|
| <u>Mismatch correction:</u> <ul style="list-style-type: none"> ♦ Correct the mismatch of the two data entries mainly in Name, PAN, AO code, Total Amount ♦ Mark the tag complete. ♦ Tag will be ready for Inspector check. | Office Superintendent (Data Processing Assistant Grade 'B') (Data Processing Assistant Grade 'A') LDC/TA/Sr.TA |
| <u>Inspector check:</u> <ul style="list-style-type: none"> ♦ Set query limit of amount Rs. 5,00,000/- to Rs. 20,00,000/- (one time activity) ♦ Clear the tags in batch mode (tags having challans of less than Rs.5,00,000/- will be cleared automatically; after this, only tags having challans of Rs.5,00,000/- to Rs.20,00,000/- will become available) ♦ Check all challans of Rs.5,00,000/- to Rs.20,00,000/-. ♦ Mark the tag complete ♦ Tag will be ready for D.O. check | Inspector |
| <u>Designated Officer (D.O.) check:</u> <ul style="list-style-type: none"> ♦ Set query limit of amount above Rs.20,00,000/- (one time activity) ♦ Clear the tags in batch mode (tags having challans of less than Rs.20,00,000/- will be cleared automatically; after this, only tags having challans above Rs.20,00,000/- will become available) ♦ Check all challans of Rs.20,00,000/- and above ♦ Mark the tag clean ♦ (After this no one including D.O. can make any change except through process of correction) | Designated Officer (D.O.) (ACIT/ITO/Incharge of CTU) |
| <u>Reconciliation of Branch Scroll:</u> <ul style="list-style-type: none"> ♦ After entry of all challans and clearing of tags by D.O. reconcile the Branch Scrolls | Office Superintendent (Data Processing Assistant Grade 'B') (Data Processing Assistant Grade 'A') LDC / TA / Sr. TA |
| <u>Missing challan handling:</u> <ul style="list-style-type: none"> ♦ Populate missing challan (name and total amount) from Branch Scroll. ♦ D.O. clears missing challans | Office Superintendent (Data Processing Assistant Grade 'B') (Data Processing Assistant Grade 'A') LDC / TA / Sr. TA Designated Officer (D.O.) (ACIT/ITO/Incharge of CTU) |
| <u>Surplus challan handling</u> <ul style="list-style-type: none"> ♦ Matching of missing challans with the surplus (automatically or manually) ♦ D.O. clears the match | Office Superintendent (Data Processing Assistant Grade 'B') (Data Processing Assistant Grade 'A') LDC / TA / Sr. TA Designated Officer (D.O.) (ACIT/ITO/Incharge of CTU) |

| | |
|--|---|
| <u>Suspense management:</u> <ul style="list-style-type: none"> ◆ Suspense challans (challans without AO code) claim (by A.O., Supervisor on AO request. ◆ D.O. clears the claim. | Office Superintendent (Data Processing Assistant Grade 'B') (Data Processing Assistant Grade 'A') LDC / TA / Sr. TA Designated Officer (D.O.) (ACIT/ITO/Incharge of CTU) |
| <u>Maintain outstation challans:</u> Outgoing <ul style="list-style-type: none"> ◆ Hard copy of the outstation DCR will be printed ◆ Send hard copy of DCR to concerned CTU ◆ Challan will be populated by Supervisor ◆ D.O. clears the challans Incoming <ul style="list-style-type: none"> ◆ Receive the hardcopy of the DCR from outstation CTU ◆ Challan will be populated by Supervisor ◆ D.O. clears the challans. | Office Superintendent (Data Processing Assistant Grade 'B') (Data Processing Assistant Grade 'A') LDC / TA / Sr. TA Designated Officer (D.O.) (ACIT/ITO/Incharge of CTU) |
| <u>Query</u> <ul style="list-style-type: none"> ◆ On status of tags; operators; clean challans; missing challans; suspense challans; corrected challans | Office Superintendent (Data Processing Assistant Grade 'B') (Data Processing Assistant Grade 'A') LDC / TA / Sr. TA Designated Officer (D.O.) (ACIT/ITO/Incharge of CTU) |
| <u>Report generation:</u> <ul style="list-style-type: none"> ◆ Supervisor can generate the following nine reports:- <ol style="list-style-type: none"> Provisional Daily Collection Report Daily Collection Report ZAO report Simple Major head wise report AO wise collection report CIT wise collection report CTU wise collection report Bank letters Challan print | Office Superintendent (Data Processing Assistant Grade 'B') (Data Processing Assistant Grade 'A') LDC / TA / Sr. TA |

Annexure – I

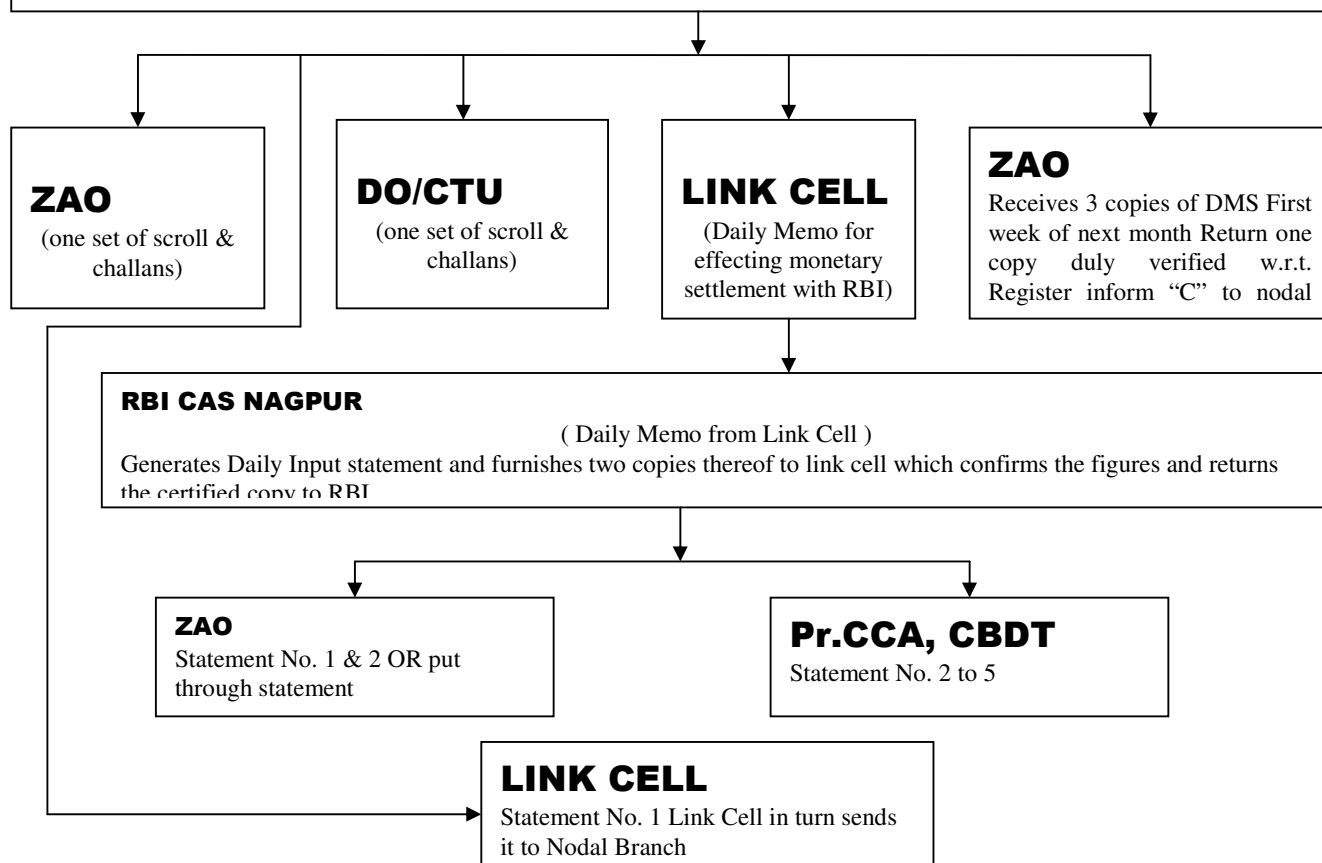
FLOW OF DOCUMENTS/REMITTANCE

RECEIVING BRANCH

1. Prepare scroll in quadruplicate separately for each major head on daily basis.
2. One original copy of scroll along with challan arranged in serial order intended for D.O.
3. Duplicate copy of scroll along with challans arranged in serial order intended for Z.A.O.
4. Triplicate copy (without challan) along with daily Summary intended for Nodal Branch.
5. Quadruplicate copy of scroll to be retained by it for record.
6. Send the above scroll/challan to Nodal Branch under cover a forwarding letter.
7. The amount indicated in the scroll and forwarding letter is transferred to nodal bank through usual inter branch

NODAL BRANCH

1. Ascertain whether the remittance received through inter branch account tallies with the figures in scrolls and whether the amount entered in scroll tallies with the challan. Also checks whether the scrolls are in serial order.
2. Consolidated branch scrolls including its own and includes the transaction in Daily main scroll to be prepared in triplicate D.O. wise and Major Head-wise. DMS are given a serial number extending to a financial year.
3. Prepare a Daily Summary of all Major Heads.
4. Forwards one consolidated set of scroll, including original copy of Main Scroll along with 2 copies of Daily Summary together with challans, to ZAO on daily basis.
5. Send another similar set containing challans to D.O. on bi-weekly basis.
6. Third set copies of scrolls (without challans) received from all receiving branches including its own are consolidated and attached and together D.O. wise and Major Head-wise which is retained by Nodal Branch as office copy.
7. Records a certificate on each DMS to the effect that necessary advice has been sent to the Link Cell on (date) for



Chapter- 15

INTEREST

1. The Income-tax Act provides for the charging of interest from the assessee for various defaults committed by him as well as payment of interest to him if there is a delay in the payment of the refund or deposit of the amount due to him.

2. Interest chargeable under the Income-tax Act : The provisions relating to the charging of interest under the Income-tax Act are summarized below:

| <u>Sl. No</u> | <u>Section</u> | <u>Circumstances under which interest can be charged</u> | <u>Rate of Interest (as on 1-6-02)</u> | <u>Period</u> |
|----------------------|-----------------------|---|--|--|
| 1. | 115 P | Failure to pay the whole or any part of the tax on distributed profits as required u/s 115 O | 1.25% per month or part thereof of such tax | From 15th day of declaration /distribution/ payment of dividend (whichever is earlier) to the date of payment of tax |
| 2. | 115 S | Failure to pay the whole or any part of the tax on income distributed as required u/s 115 R | 1.25% per month or part thereof of such tax | From 15th day of distribution/payment of income (whichever is earlier) to the date of payment of tax |
| 3. | 158 BFA(1) | Failure to furnish the return in response to notice u/s 158 | 1.25% per month or part thereof of the tax on undisclosed income | From the expiry of period mentioned in the notice till the date of filing of return; if no return is filed, till the |

| | | | | |
|-----------|----------------|---|---|--|
| | | BC (a) | | date of completion of assessment |
| 4. | 201(1A) | Failure to deduct or short deduct tax at source or failure to pay TDS to Government account | 15% p.a. on the amount of tax not deducted or not paid after deduction | From the date the tax was deductible till the date of actual payment |
| 5. | 206C(7) | Failure to collect tax or failure to remit the tax collected to the Government account | 1.25% per month or part thereof of the tax not collected or paid | From the date the tax was collectible till the date of actual payment |
| 6. | 220(2) | Failure to pay the amount as specified in the demand notice | 1.25% per month or part thereof of such amount | After expiry of the time mentioned in the demand notice till date of payment |
| 7. | 234A | Failure to file the return within the due date specified in section 139(1) or in response to notice u/s 142(1) Failure to file return in | 1.25% per month or part thereof of the tax determined as reduced by advance tax paid and TDS/TCS 1.25% per month or part thereof of the tax determined as reduced by the tax on total income earlier determined u/s 143(1) or 143(3) | After expiry of the due date till the date of filing of return or, where no return is filed, till the date of assessment |

| | | | | |
|-------------|------------------|--|---|--|
| | | response to notice u/s 148 | | |
| 8. | 234B | Failure to pay or shortfall in payment of advance tax | 1.25% per month or part thereof on the amount of assessed tax as reduced by advance tax paid if any | Ist of April till date determination or assessment of income |
| 9. | 234C | Failure to pay the instalments of advance tax as prescribed | 1.25% per month | 3 months in respect of defaults relating to the instalments due in June, September and December. 1 month in respect of the last instalment |
| 10 . | 245D(2 C) | Failure to pay tax in accordance with section 245D(2A) | 15% per annum of such tax | After 35 days of receipt of order till date of payment |
| 11 . | 245D(6 A) | Failure to pay tax in accordance with section 245D(4) | 15% per annum of such tax | After 35 days of receipt or order till date of payment |

3. Interest payable to the assessee : The provisions relating to the payment of interest to the assessee are summarized below:

| <u>Sl. No</u> | <u>Section</u> | <u>Circumstances under which interest is to be paid</u> | <u>Rate of interest (as on 1-6-02)</u> | <u>Period</u> |
|----------------------|-----------------------|--|---|-------------------------------------|
| 1. | 244A(1)(a) | Refund arising due to excess payment of advance tax, TDS or TCS | Two-third percent per month or part thereof | 1st April to date of refund |
| 2. | 244A(1)(b) | Refund arising in other cases | Two-third percent per month or part thereof | Date of payment till date of refund |

| | | | | |
|-----------|----------------|--|---------------|---|
| | | | | |
| 3. | 269K(4) | Delay in payment of compensation as required section 269K by Central Government | 15% per annum | From the expiry of 30 days till date of payment |
| 4. | 132B(4) | Repayment of the excess amount of seized money or return of seized assets after discharge of liabilities mentioned in section 132B(1) | 8% per annum | 121st day after execution of the warrant to the date of assessment. |

4. Calculation of interest [Rule 119A] : In calculating interest payable by the assessee or interest payable by the Government to the assessee, the amount of tax, penalty or other sum in respect of which interest is to be calculated will be rounded off to the nearest multiple of Rs. 100 ignoring any fraction of Rs. 100. Where interest is to be calculated on annual basis, the period for which such interest is to be calculated shall be rounded off to a whole month and for this purpose any fraction of a month shall be ignored. Where the interest is to be calculated for every month or part of a month comprised in a period, any fraction of a month shall be deemed to be a full month.

5. Reduction or waiver of interest u/s 220(2)

5.1 The interest levied u/s 220(2) can be waived by the Chief Commissioner or Commissioner if the following conditions mentioned in section 220(2A) are satisfied:

- i. payment of such amount has caused or would cause genuine hardship to the assessee
- ii. default in the payment of the amount on which interest has been paid or was payable under the sub-section was due to circumstances beyond the control of the assessee

iii. the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

5.2 On receipt of the assessee's petition for waiver, the report of the Assessing Officer should be called for through the Range Addl.CIT/JCIT. This report should, inter-alia, contain the following particulars:-

- i. Name of the assessee
- ii. Address of the assessee where any notice/order could be served
- iii. P.A.N.
- iv. Assessment Year
- v. Date of filing of the return/Income returned
- vi. Date of completion of the assessment and the income assessed
- vii. Reasons for the difference between the returned income and the assessed income
- viii. Whether any appeal filed, and the result of the appeal, if disposed of
- ix. Whether any stay granted, if so the details of the same, like date of grant of the stay, and period upto which it is effective
- x. Whether any installment scheme granted and the details thereof, such as, the date of granting of installment, number of instalments allowed and the amount payable in each installment, and the authority who granted the installment scheme.
- xi. Whether the assessee has cooperated in the matter of completion of the assessment and in the matter of payment of the assessed tax.
- xii. In case the assessee claims financial hardship as a reason for the default in the payment of the assessed tax, the latest financial status of the assessee with reference to the records, balance sheet, bank accounts etc.. and also whether the claim of financial hardship is genuine.
- xiii. Whether in earlier / subsequent three assessment years, interest u/s 220(2) was levied and whether the assessee made any petition for waiver.
- xiv. Any other point which may have a bearing in deciding the petition.

5.3 A speaking order discussing all the facts and circumstances of the case which are relevant for allowing or rejecting the petition should be passed by the Chief Commissioner or Commissioner. If the petition is to be rejected, an opportunity of hearing should be given to the assessee before rejection.

6. Reduction or waiver of interest under sections 234A, 234B and 234C

6.1 Subject to the specified conditions, Chief Commissioners and Director Generals (Investigation) are authorized to reduce or waive the interest under sections 234A, 234B and 234C in the following circumstances

A. Additional income on account of court's order etc.

Where any income accrues or arises for any previous year due to the operation of any order of a Court, statutory authority or the Government passed after the close of the said previous year, the interest can be reduced or waived if the following conditions are satisfied:-

- i. the relevant income is disclosed in the return furnished for the said previous year or is otherwise disclosed to the Assessing Officer
- ii. the tax attributable to such income has been paid.

Period for which reduction/waiver is to be given

Interest u/s 234A – date immediately following the due date for furnishing the return till the end of the month in which the relevant order giving rise to the income is passed.

Interest u/s 234B – 1st of April of the Assessment year till the end of the month in which the relevant order giving rise to the income is passed.

Interest u/s 234C – period mentioned in the section for levy of interest

The quantum of interest to be reduced or waived is the difference between the interest computed with reference to the total income inclusive of the relevant income and the interest computed with reference to the total income as reduced by the relevant income.

B. Other cases

- i. Where, in the course of a search, books of account have been taken over by the Department and were not available to the assessee to prepare his return. The interest u/s 234A can be waived in respect of the period of delay which can be attributed to the Assessing Officer in allowing the assessee to take extracts.
- ii. Where, in the course of a search, cash had been seized which was not permitted to be adjusted against arrears of tax or payment of advance tax instalments falling due after the date of the search.

To claim the benefit of waiver of interest for the default in payment of advance tax, at least one installment for payment of advance tax must remain after the seizure of cash and the assessee should prove that he had no other cash to pay the advance tax. In addition, the non-adjustment of the seized cash against the advance tax liability should be on account of the failure of the Assessing Officer to make such an adjustment after an application has been made in this regard by the assessee.

- iii. Any income other than capital gains which was received or accrued after the date of first or subsequent installment of advance tax. This should neither have been anticipated nor contemplated by the assessee. Further advance tax should have been paid after the receipt of such income.

The waiver under this clause would be applicable for interest u/s 234C if at least one installment for payment of advance tax remains after receipt of the unexpected income. Further, the assessee should have paid the advance tax in this remaining installment. The shortfall in the payment of advance tax instalments in respect of the existing income cannot be considered under this clause.

- iv. Where, as a result of any retrospective amendment of law or the decisions of the Supreme Court after the end of the relevant previous year, certain receipts hitherto treated as exempt, become taxable

The interest leviable under sections 234B and 234C on account of the shortfall occurring due to the non-payment of advance tax on such income can be considered under this clause.

- v. Where a voluntary return could not be filed within the stipulated time-limit or advance tax could not be paid at the relevant time, due to circumstances beyond the control of the assessee. The return should be filed before issue of a notice by the department and the delay should be due to circumstances beyond the control of the assessee.

6.2 The assessee should comply with the following requirements for consideration of his petition :-

- i. The assessee should have filed the return on the basis of which assessment has been concluded and interest levied
- ii. The assessed tax has to be paid by the assessee before filing the petition. The challan's counterfoil copy must be enclosed with the petition in evidence of payment
- iii. The petition must be filed in duplicate and copies of the relevant assessment order should be enclosed
- iv. The reasons for the belated filing of the return of income or the short/non-payment of advance tax must be clearly explained

6.3 On receipt of the petition, the report of the Assessing Officer is to be called for through the Range Addl.CIT/JCIT. Thereafter, a speaking order is to be passed either waiving or reducing the interest or rejecting the petition.

7. Powers of Settlement Commission on reduction/waiver of interest : The Settlement Commission may reduce or waive the interest levied u/s 234A, 234B and 234C only within the parameters laid down in the Circular dated 23-5-1996, and not in terms of section 245D(4) or (6). The Settlement Commission cannot also assume the powers u/s 119 by equating itself with the Board. This is because the Board is an executive authority being part of the Ministry of Finance. Its actions are amenable to scrutiny by that Ministry and by Audit and also Parliament. The Settlement Commission constituted u/s 245B, is a quasi-judicial body and its orders are not amenable to supervisory or appellate jurisdiction of the Ministry of Finance. Its orders u/s 245 I are conclusive and cannot be reopened in any

proceedings under the Act or under any other law. Hence the Settlement Commission cannot claim the right to exercise the power vested in the Board u/s 119. This is an executive power comprising issue of directions to other income-tax authorities.

Chapter- 16

PENALTIES

1.1 Penalties have been stipulated in Chapter XXI, as also in sections 221 and 158BFA of the Income-tax Act for contravention of various provisions. Chapter XXI in particular also lays down the procedure, the approvals to be taken and the conditions to be fulfilled for waiver or reduction.

1.2 Penalty is leviable over and above the tax or interest payable by the assessee. A penalty is imposed only if the competent authority is during the course of a proceeding under the Act satisfied that the person is guilty of contravening the relevant statutory provision. Penalty proceedings for certain contraventions have to be initiated prior to the completion of assessment proceedings

2. Procedure for the levy of penalty

2.1 Unlike the levy of interest, imposition of a penalty does not follow ipso facto on the commission of a default. The competent authority has the discretion, not to levy the penalty if the assessee can establish that he was prevented by a reasonable cause from complying with the provisions of the law (Sec. 273B). However, the provisions of Sec. 273B would not be applicable in cases where penalty proceedings have been initiated for concealment or furnishing of inaccurate particulars of income. If the income tax authority is of the opinion that the penalty proceedings should not be initiated, then the reasons for failure to initiate should form part of the record.

2.2 Prior to 10-09-1986, the onus of proving that the assessee had deliberately committed the default was on the department. However with the amendments brought about by the Taxation Laws (Amendment and Misc. Provisions) Act, 1986, w.e.f. the aforesaid date this burden along with the onus to show that there was a reasonable cause for the lapse has shifted to the assessee.

3. Opportunity of hearing : Section 274 provides that a reasonable opportunity of hearing should be provided before a penalty is imposed. After giving such opportunity, if the authority concerned is satisfied that penalty is to be levied, its quantum should fall within the parameters laid down in the relevant provision. If a fixed amount of penalty has been prescribed, then the authority has no discretion to vary this amount. The penalty levied by a lower authority can be increased, decreased or cancelled by a higher authority in appeal or revision. Where a minimum and maximum have been prescribed, the penalty levied should fall within these limits. Hence, it follows that in case the default is established and is without reasonable cause the CIT(A) cannot reduce the penalty to an amount lower than the prescribed minimum. If the quantum is to be increased by a higher authority, an opportunity of hearing has to be again given by it, keeping in mind the principles of natural justice.

4. Change of incumbent in office : **If there is a change in the incumbent during the pendency of the proceedings, a successor can continue the proceedings from the stage at which they been left by his predecessor. However, if the assessee demands a fresh hearing, such a rehearing should be granted to him (Sec. 129).**

5. Law applicable : **The substantive law applicable to the levy of penalty is the law as it stood as on the date on which the default was committed. Procedural law regarding such issues as time-limits, obtaining approvals, etc. would be the law as it stood as on the date of initiation or levy.**

6. Approval of Joint Commissioner for the levy of penalty : **Section 274 lays down the limits on the quantum of penalty leviable by an Assessing Officer. If the authority levying the penalty is an Income Tax Officer, approval of the Addl./Joint Commissioner has to be obtained if the amount exceeds Rs. 10,000. Similarly, an Assistant Commissioner or Deputy Commissioner has to obtain the approval of the Addl./Joint Commissioner if the quantum exceeds Rs. 20,000.**

7. Penalty levied by an authority other than the Assessing Officer : **In addition to the Assessing Officer, higher income tax authorities can also levy the penalties for the defaults committed during any proceedings before them. There are certain penalties which cannot be levied by the Assessing Officer, but can be imposed only by a JCIT or other higher authorities. All the authorities competent to impose penalties are indicated in the last column of the tables in paras 11 to 14. Where the authority levying the penalty is not the Assessing Officer, a copy of the penalty order is to be forwarded to the Assessing Officer.**

8. Time limits

8.1 **A time frame has been provided for finalizing the penalty proceedings. The time limits as prescribed in Section 275 within which the penalty can be levied are as under:-**

a. If the assessment or other order, consequent to which the penalty is to be levied is the subject-matter of appeal, either before the CIT(Appeals) or ITAT, the order for imposing penalty has to be passed within the financial year in which the penalty proceedings were initiated or six months from the end of the month in which the order of the CIT(Appeals) or ITAT, as the case may be, is received by the Chief Commissioner or Commissioner, whichever period expires later.

b. Similarly, where the assessment or other order is the subject-matter of revision under section 263, the penalty order will have to be passed within six months from the end of the month in which such order of revision is passed.

c. In other cases, that is, where the relevant assessment or other order is neither the subject-matter of appeal nor revision, the order imposing the penalty has to be passed within the financial year in which the penalty proceedings have been initiated, or six months from the end of the month of such initiation, whichever period expires later.

8.2 **In reckoning the above time limits, the following periods are to be excluded:-**

i. The time taken in giving an opportunity to the assessee, at his request, to be reheard consequent to the change of the incumbent in office.

- ii. The period of immunity granted by the Settlement Commission, if the conditions prescribed therein are not satisfied or are contravened later.
- iii. The period during which the proceedings for the levy of penalty are stayed by an order of injunction of any court.

Power of the Commissioner to reduce or waive the penalty

A. Penalty for concealment or furnishing inaccurate particulars of income

9. Under the provisions of Sec. 273A(1), the Commissioner has been vested with the powers to reduce or waive the penalty levied under section 271(1)(c) for concealment of income or furnishing inaccurate particulars of the income. This power can be exercised by the Commissioner, either on his own motion or otherwise, if he is satisfied that the assessee has voluntarily and in good faith, made a full and true disclosure of his income and has also cooperated in the enquiries relating to assessment. This disclosure should be made before the Assessing Officer detects concealment or filing of inaccurate particulars. An added condition is that the assessee should have either paid or made satisfactory arrangements for the payment of tax or interest in consequence of the order passed for the relevant assessment year. In case the amount of income on which the penalty is to be levied exceeds Rs. 5,00,000/-, the Commissioner will obtain the approval of the Chief Commissioner or Director General, as the case may be, before passing the order to reduce or waive the penalty. The provisions also stipulate that once an assessee obtains this relief from the Commissioner, such an assessee will not be entitled to a similar relief in relation to any other assessment year at any time after the making of such an order. In other words, this relief is available to the assessee only once in his life time.

9.1 When the application u/s 273A is filed before the Commissioner, a report is called for from the Assessing Officer. This report should inter-alia contain the details of the assessee, the assessment made as also whether all the conditions required for the waiver/ reduction are satisfied. The report of the Assessing Officer is to be forwarded to the CIT through the range JCIT/Addl.CIT, who should also give his comments in this regard.

B : Waiver or reduction of penalty in cases of genuine hardship

10. In addition, as per the provisions of Sec. 273A(4), the Commissioner can reduce or waive any penalty levied under the Income-tax Act, after recording his reasons for doing so. The Commissioner should be satisfied that the levy of the penalty would cause genuine hardship to the assessee - having regard to his circumstances; in addition the assessee should also have cooperated in the enquiries relating to the assessment and subsequent recovery proceedings. This power can be exercised only on an application being made by the assessee and not suo-moto by the Commissioner. If the amount of penalty, or if the application relates to more than one penalty, then the aggregate of such penalties, exceeds Rs. 100,000/-, the Commissioner has to pass the order of reduction or waiver with the previous approval of the Chief Commissioner or Director General, as the case may be.

11. Penalties leviable under the Income Tax Act : The various penalties leviable under the Income Tax Act as on 1-4-2002 are summarised below in a tabular form for easy reference. For the full text of the penalty provisions or for the legal pronouncements on these provisions, a reference should be made to the Income-tax Act or a commentary.

| Sl.No. | Penalty under section | Default under section | Nature of Default | Penalty Leviable | Authority who can levy penalty |
|--------|-----------------------|-----------------------|---|---|---|
| 1. | 158BFA(2) | 158BC | Failure or delay in filing the return | 100% to 300% of the tax leviable in respect of the undisclosed income determined u/s 158BC(c) | AO CIT(A) |
| | | | Failure to disclose full income of the block period in the return | 100% to 300% of the tax leviable on excess of the assessed undisclosed income over the returned income | |
| 2. | 221(1) | 140A(3) | Failure to pay the tax or interest in accordance with sec. 140A(1) | Such amount as the Assessing Officer may impose for the default or continuing default subject to a maximum of the amount in arrears | AO |
| | | 220 | Failure in making the payment of tax within the prescribed time-limit | | |
| 3. | 271(1)(b) | 142(1) | Failure to comply with notices issued | Rs.10,000 for each such default (upto 31-5-2001- Rs.1,000 to Rs. 25,000 for each such default) | AO CIT(A) [the CIT can also levy the penalty w.e.f. 1-6-2002] |

| | | | | | |
|------------|--------------------------------|------------------------------|--|---|------------------|
| | | 143(2) | | | |
| | | 142(2A) | Failure to comply with the directions to get the accounts audited | | |
| 4. | 271(1)(c) | | Concealment of or furnishing inaccurate particulars of income | 100% to 300% of the amount of tax sought to be evaded | - do - |
| 5. | 271A | 44AA | Failure to keep, maintain or retain books of account, documents, etc. as required | Rs.25,000 (upto 31-5-2001 : Rs.2000 to Rs.1,00,000) | AO CIT(A) |
| 6. | 271AA (w.e.f. 1-4-2002) | 92D | Failure to keep and maintain information and documents as required | A sum equal to 2% of the value of each international transaction entered | AO CIT(A) |
| 7. | 271B | 44AB | Failure to get accounts audited or to furnish audit report as required | ½ % of total sales, turnover or gross receipts, or Rs.1,00,000 whichever is less | AO |
| 8. | 271BA (w.e.f. 1-4-2002) | 92E | Failure to furnish the report from an Accountant | Rs. 1,00,000 | AO |
| 9. | 271C | Chapter XVIIIB (TDS) | Failure to deduct the whole or any part of tax as required | Amount equal to the tax which has not been deducted | JCIT |
| | | | Failure to pay the whole or any part of tax as required u/s 115-O or 194B | Amount equal to the tax not paid | |
| 10. | 271D | 269SS | Taking or accepting certain loans or deposits in contravention of the provisions | Amount equal to the amount of loan or deposit taken or accepted | JCIT |
| 11. | 271E | 269T | Deposit repaid in contravention of the provisions | Amount equal to the deposit repaid | JCIT |
| 12. | 271F | 139(1) | Failure to furnish the return of income before the end of the relevant asst. year | Rs.5,000 (upto 31-5-2001 - Rs.1,000) | JCIT |
| | | 139(1) | Failure to furnish | Rs.5000 | |

| | | first proviso | return of income on or before due date | (upto 31-5-2001 - Rs.500) | |
|------------|-------------------------------|----------------------|---|--|---|
| 13. | 271G (w.e.f. 1-4-2002) | 92D(3) | Failure to furnish information or documents as required | A sum equal to 2% of the value of the international transaction for each such failure | AO CIT(A) |
| 14. | 272A(1) | 92D(3) | Refusal or failure to: a. answer questions b. sign statements c. comply with summons u/s 131(1) | Rs.10,000 for each such failure or default (upto 31-5-2001 : Rs. 500 to Rs.10,000) | Incomet ax Authority of the rank of JCIT or JDIT and above |
| 15. | 272A(2) | 94(6) | Failure to comply with the notice regarding furnishing of information of securities | Rs.100 for every day during which each such default continues | Income Tax Authority of the rank of JCIT or JDIT and above |
| | | 176(3) | Failure to give discontinuance notice of business or profession | | |
| | | 133 | Failure to furnish in due time, the returns, statements or particulars mentioned in the provisions | | |
| | | 206 | | | |
| | | 206C | | | |
| | | 285B | | | |
| | | 134 | Failure to allow inspection of any register of the company or take copies thereof | Rs.100 for every day during which each such default continues | Income Tax Authority of the rank of JCIT or JDIT and above |
| | | 139(4A) | Failure or delay in filing | | |

| | | | | | |
|-----|-------------------------|---------------------------|---|---|--|
| | | and (4C) | the return of income u/s139(4A) or (4C) | | |
| | | 197A | Failure to deliver copy of the declaration | Rs.100 for every day during which each such default continues (cannot exceed tax deductible or collectible) | CCIT CIT |
| | | 203 | Failure to furnish a certificate of TDS/TCS at source | | Income Tax Authority of the rank of JCIT or JDIT and above |
| | | 206C | | | |
| | | 226(2) | Failure to deduct and pay tax as required u/s 226(2) | | |
| | | 192(2C) w.e.f. 1-4 - 2002 | Failure to furnish statement | | |
| 16. | 272AA | 133B | Failure to comply with the directions to furnish prescribed information | Upto Rs 1000 | JCIT/ JDIT DDIT ADIT AO |
| 17. | 272B (w.e.f 1-6-2002) | 139A | Failure to apply for PAN or quoting false PAN | Rs.10,000 | AO |
| 18. | 272BB | 203A | Failure to obtain or quote Tax Deduction Account Number | Rs.10,000 (upto 31-5-2001 - upto Rs.10,000) | AO |
| 19. | 272BBB (w.e.f 1-6-2002) | 206C | Failure to apply for or quote Tax Collection at Source Account Number | Rs. 10.000 | AO |

12. Penalties leviable under the Wealth-tax Act

| Sl. No. | Penalty under section | Default under section | Nature of Default | Penalty Leviable | Authority who can levy penalty |
|---------|-----------------------|-----------------------|---|---|--|
| 1. | 18(1)(b) | 16(2) | Failure to comply with the notices issued | Rs.1,000 to Rs.25,000 for each such default. | AO CIT(A) |
| | | 16(4) | | | |
| 2. | 18(1)(c) | | Concealment of particulars of assets or furnishing of inaccurate particulars of assets | 100% to 500% of the amount of tax sought to be evaded | AO CIT(A) |
| 3. | 18 A(1) | 16(4) | Refusal or failure to: a. answer questions b. sign statements c. comply with summons u/s 37(1) | Rs.500 to Rs.10,000 for each such failure or default (Fixed at Rs.10,000 w.e.f. 1-6-2001) | Wealth Tax Authority of the rank of JCIT or JDIT and above |
| 4. | 18A(2) | 38 | Failure to furnish the required statement or information in due time | Rs.100 to Rs.200 for every day of default | |

13. Penalties leviable under the Interest tax Act

| Sl. No. | Penalty under section | Default under section | Nature of Default | Penalty Leviable | Authority who can levy penalty |
|---------|-----------------------|-----------------------|--|---|--------------------------------|
| 1. | 13 | | Concealment of particulars of chargeable interest or furnishing of inaccurate particulars of chargeable interest | 100% to 300% of the amount of tax sought to be evaded | AO CIT(A) |
| 2. | 23 | 8 | Failure to produce the required accounts or | Rs.1000 to Rs.25000 for each such failure | AO |

| | | | | | |
|--|--|--|------------------|--|--|
| | | | documents | | |
|--|--|--|------------------|--|--|

14. Penalties leviable under the Expenditure-tax Act

| Sl.No. | Penalty under section | Default under section | Nature of Default | Penalty Leviable | Authority who can levy penalty |
|--------|-----------------------|-----------------------|---|--|--------------------------------|
| 1. | 15(a) | 7 | Failure to collect tax | 100% of such tax | AO |
| 2. | 15(b) | 7 | Failure to pay the tax collected to the credit of Central Government | Rs.100 to Rs.200 for each day of default (not to exceed the amount of tax) | AO |
| 3. | 16 | 8 | Failure to furnish return in due time | Rs.100 to Rs.200 for each day of default | AO |
| 4. | 17 | | Concealed or furnished inaccurate particulars of chargeable expenditure | 100% to 200% of the amount of tax sought to be evaded | AO CIT(A) |
| 5. | 18 | 9 | Failure to respond to notice | 10% to 50% of the tax sought to be evaded | AO |

15. Registers to be maintained

15.1 When the penalties are required to be initiated during the course of an assessment, a mention of such initiation must be made in the body of the assessment order itself. As time limits have been laid down for the imposition of penalties, it is imperative that a check is kept on the time-barring date. For this, it becomes absolutely necessary that entries should be made in the registers prescribed for this purpose. The serial number and page number of the penalty register in which the entry is made should be noted in the original assessment order kept on file.

15.2 Separate registers have been prescribed for the penalties initiated under section 271(1)(c) and for penalties initiated under other sections. Specimens of these registers are given below:-

Register of penalties – other than u/s 271(1)(c)

ITNS 159

| Sl. No | PAN No. | Name and address of the assessee | Status | Asst. year | Section under which penalty imposed | Date of completion of proceedings in course of which penalty proceedings commenced |
|--------|---------|----------------------------------|--------|------------|-------------------------------------|--|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| | | | | | | |

| Date of issue/ service of show cause notice | Limit ation date | Date of penalty order | Amount of penalty imposed | Date of appellate order of CIT(A) | Penalty determine d | CIT | |
|--|------------------------|-----------------------------|------------------------------------|--|---------------------------|---------------------|---------------------------|
| | | | | | | Date of order | Penalty determine d |
| 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| | | | | | | | |

| ITAT | | High Court | | Supreme Court | | Rectification u/s 154 | | Remarks |
|-------------------------|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------|--------------------------|---------------------------|---------|
| Date of orde r | Penalty determ ined | Date of judge- ment | Penalty determ ined | Date of judge- ment | Penalty determ ined | Date of order | Penalty determ ined | |
| 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| | | | | | | | | |

- Note:
- Columns 1 to 9 are to be filled up when penalty proceedings are initiated
 - Columns 10 and 11 are to be filled up when penalty is imposed
 - Results of appeal, revision, reference or rectification are to be noted in columns 12 to 23
 - Column 24 is for Remarks

Register of penalties u/s 271(1)(c)

ITNS 159A

| Sl. No | PAN No. | Name and address of the assessee | Status | Asst. year | Tax demanded | Date of completion of proceedings in course of which penalty proceedings commenced |
|-----------|------------|---|--------|---------------|--------------|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| | | | | | | |

| Date of issue/ service of show cause notice | Limitatio n date | Tax sought to be evaded | Minimum penalty imposable | Date of reference u/s274(2) | Date of passing of penalty order | Amount of penalty imposed |
|--|---------------------|----------------------------------|---------------------------------|-----------------------------------|---|------------------------------------|
|--|---------------------|----------------------------------|---------------------------------|-----------------------------------|---|------------------------------------|

| 8 | 9 | 10 | 11 | 12 | 13 | 14 |
|---|---|----|----|----|----|----|
| | | | | | | |

| Whether appeal filed u/s 246? If not, has the time for filing appeal expired | Results of appeal u/s 246 | | Results of higher appeals, revision or reference | | | | High Court | |
|--|---------------------------|--------------------|--|--------------------|---------------|--------------------|-------------------|--------------------|
| | Date of CIT(A) order | Penalty determined | CIT | | !TAT | | Date of judgement | Penalty determined |
| | | | Date of order | Penalty determined | Date of order | Penalty determined | | |
| 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 |
| | | | | | | | | |

| Supreme Court | | Rectification u/s154 | | Remarks |
|-------------------|--------------------|----------------------|--------------------|---------|
| Date of judgement | Penalty determined | Date of order | Penalty determined | |
| 24 | 25 | 26 | 27 | 28 |
| | | | | |

Note:-

- Cols. 1 to 11 are to be filled up when the penalty proceedings are initiated
- Col. 12 is to be filled in when reference to JCIT is made.
- Cols. 13 and 14 are to be filled up when penalty is imposed
- Cols. 15 to 27 incorporate results of appeal, reference or rectification
- Col. 28 is for Remarks.

Chapter- 17
PROSECUTION

1. The assessee would be liable for prosecution if he commits any of the offences mentioned in Chapter XXII of the Income tax Act. These provisions have to be read with the relevant provisions of the Indian Penal Code. After a critical study of the case records and examination of the witnesses, a conclusion has to be reached whether the prosecution proceedings are to be launched or not. Certain statutory formalities and executive requirements are to be met for the initiation of these proceedings, which are essentially criminal in nature. These are discussed below.

2. Selecting a case for prosecution

2.1 The Board has emphasised in Instruction No. 1618 dated 3-06-1985 that the foundation for prosecution should be laid at the time of enquiry for assessments itself. Although no hard and fast rule can be laid down for selecting potential cases for prosecutions, the following guidelines can be made use of at the stage of assessment for developing a case for prosecution:-

- i. information regarding the assessee and his general reputation
- ii. intimations received from other officers regarding the business transactions of the assessee
- iii. substantial increase in wealth
- iv. unsatisfactory state of accounts and low rate of profit – improved conditions of particular trade or industry during the year, not reflected in the books of accounts
- v. assessee being connected with any important group of cases suspected to be evading taxes

2.2 Specifically, the weaknesses in each case should be looked into and identified. While going through the accounts and documents furnished by the assessee, the following aspects should be looked into:-

- i. the Profit and Loss Account and balance sheet of the earlier years should also be examined to find out if there has been any abnormal or unusual increase or decrease in any item or to see whether any new item has been introduced
- ii. the Wealth-tax records, if any, should be scrutinised to see whether there has been any abnormal increase in the wealth
- iii. total wealth statement may be obtained wherever required
- iv. the methods of detecting tax evasion described in the volumes of “Investigation of Accounts” in the context of the practices followed in the specific trade/industry may be kept in view
- v. whether any addition has been made in the earlier years and if so what happened to it in appeal
- vi. wherever the accounts are audited, the notes of the Auditor should be examined to see whether any comments have been made on the financial results of the organisation. The report of Cost Auditors, if any, may also be seen

2.3 It is not possible to spell out all the areas from where concealment could be detected. Some clues which the Assessing Officer is likely to come across while examining the books of accounts are as under:-

- i. Bogus or inflated purchases
- ii. Bogus, inflated or personal expenditure claims
- iii. Suppression or understatement of sales
- iv. Suppression or under-valuation of stocks – statement of stock given to banks can be examined
- v. Payment of excessive commission or secret commission
- vi. Erasures, overwritings or totaling mistakes
- vii. Bogus cash credits/hundi loans
- viii. Double sets of accounts

2.4 If any fraud or tax evasion is detected, the original documents should be kept in the personal custody of the Assessing Officer. Additional evidence should also be collected from the bank accounts and other sources. For proving the signatures of the parties, opinion of the handwriting expert can be taken. The services of the Government Examiner for Questioned Documents and forensic labs of State Governments/police departments can be utilised for this purpose. Efforts should be made to collect independent evidence on the points in dispute. Such evidence should then be put to the assessee and the parties should be examined and cross-examined so that later on the assessee may not be able to take the stand that the information has been collected behind his back. It is to be mentioned here that the statements recorded by the income tax authorities are admissible in evidence so long as they are not under coercion. All the relevant evidence can be collected conveniently during the stage of assessment. Later on when the assessee is aware that it is proposed to launch a prosecution against him, collection of independent evidence becomes difficult. Hence the Assessing Officer should exercise care in these matters while finalising the assessment in a potential prosecution case.

2.5 If, after completing all these formalities, the Assessing Officer is of the opinion that the case is fit for prosecution, further action on the following lines is to be taken:-

- i. as per Board's existing guidelines prosecution cannot be launched where the concealment does not exceed Rs. 10,000 or the assessee is above 70 years of age
- ii. the documents which would be necessary for proving the guilt of the accused should be listed, along with a list of all the witnesses
- iii. Extracts of the relevant judgements of the courts as also the Board's instructions/circulars which would strengthen the case should be placed on file
- iv. An inventory of all the information available and additional information required to make the case fool-proof should be prepared

2.6 After taking action as mentioned above, the case is to be sent to the DDI/ADI (Prosecution) for further processing. At this stage, the opinion of the Standing / Prosecution Counsel would be taken. If the opinion is that a successful prosecution complaint can be filed on the facts and circumstances of the case, necessary action for obtaining the approvals would be taken by the Prosecution Cell.

3. Nature of offence

3.1 Nature of the offence and punishment will depend on the assessee's failure to comply with the provisions of the relevant Act. Where there has been a commission of an offence to defraud the revenue, documentary evidence and oral testimony in justification thereof should have been procured by the Investigating Officer. In order to ascertain the nature of offence, the Investigating Officer should acquire mastery over the facts and circumstances of the case leading to the detection of failure or fraud. Wherever relevant, the time and place of committing the offence should also be determined. Hence, the Investigating Officer is required to study the entire records of a delinquent assessee for the following materials:-

- i. Background of the case with particular attention to past lapses

- ii. Stages of the relevant proceedings from the issue of the notice requiring submission of return to the completion of assessment and finalisation of penalty proceedings.
- iii. Placing of departmental documentary evidence (notices, return, statement of accounts etc.)
- iv. Placing of other documentary evidence
- v. Who should be the departmental witnesses
- vi. Who should be the outside witnesses
- vii. Expert testimony, if any
- viii. Placing of corroborative evidence

3.2 After the study of the records, the Investigating Officer should gather further facts from the witnesses if possible. Thereafter, the matter should be discussed with the Departmental Counsel to sift the facts and evidence to ascertain the following relevant aspects of the case:-

- i. Nature of offence
- ii. Offence under the Penal Code and sections thereof
- iii. Weak links relating to the evidence collected

3.3 After necessary action as per the Counsel's advice, a report should be drafted incorporating the following issues:-

- i. Chronological arrangement of facts and circumstances of the case giving stress to the more important aspect of delinquency
- ii. Mention of specific offences quoting the relevant section of the Act and Penal Code supported by evidence
- iii. Conclusion
- iv. Approval of the Counsel

3.4 The assessee is to be given an opportunity of hearing by issue of a show-cause notice before the prosecution proceedings are launched.

4. Authority to grant sanction

4.1 Under section 279, the competent authority to issue the sanction for prosecution is Commissioner, Commissioner (Appeals) or the Appropriate Authority as defined in section 269UA(c). In addition, the Chief Commissioner or Director General can issue instructions or directions to these income tax authorities for institution of prosecution proceedings.

4.2 As soon as the report is ready, it should be sent to the authority who will accord sanction for the initiation of prosecution proceedings. It is likely that the concerned authority may require further enquiries to be made so as to clear up a particular situation. Hence after completing inquiries, necessary sanction should be secured. In the absence of this statutory requirement, criminal proceedings will be unauthorised and illegal. If the offence committed relates to several years, such sanction should be secured for each assessment year. For different offences committed in the same year, separate prosecution proceedings have to be launched for each such offence.

5. Complainant

5.1 Care must be taken to make sure that the person signing the complaint has personal knowledge of the offence charged in the sense that he has processed a sufficient amount of the evidence which would ultimately be submitted in the court.

6. Selection of witnesses

6.1 Prior to the preparation of a complaint, witnesses and exhibits should be selected carefully. In selecting witnesses, it is advisable not to depend upon the delinquent assessee's witnesses or those upon whom he is depending for his defence. For clarity of presentation, the defence should be forced to lead its own witnesses to prove its contentions. Secondly, in the matter of selection of prosecution witnesses, it should be borne in mind that to prove a particular point, there might be several witnesses. It is advisable not to list all the witnesses for eliciting evidence on identical facts and circumstances. A scene or event comprises several stages. Accordingly, the witnesses' evidence should be so phased as to account for a particular stage of the event. In this manner prosecution can avoid contradictory statements which may arise in the course of cross-examination of the witnesses when they have been asked to report on the same event. The defence will not thus be in a position to develop discrepancies in the testimony of the witnesses. Thirdly, preference should be given to independent witnesses, such as banks, Government departments, assessee's business constituents etc., as the circumstances warrant.

7. Selection of evidence as exhibits

7.1 Almost every prosecution trail will involve the use of evidence in certain books of accounts and documents maintained in the regular course of business. Such records and documents are admissible evidence. The original return and the amended return if any, statement of accounts whenever required, and deposition of the assessee admitting an offence or contradicting his earlier stand should specifically be listed as exhibits to the complaint.

7.2 It is important that the books of accounts and documents that are to be relied upon as evidence are kept safely. If such books and documents are inadvertently handed over to the assessee, or are not readily traceable at the time of the hearing, the prosecution case gets weakened and may be dismissed.

8. Complaint

8.1 A complaint is the foundation of a prosecution proceeding. It should be written in such a manner that a person with a reasonable intelligence should be convinced about the commission of the offence by the accused. It should not be elaborate as this would give the defence an idea of the manner in which the prosecution case is to be presented. Only essential facts to show probable cause for belief that a crime was committed by the delinquent assessee need be mentioned. Another important feature relates to the mention of appropriate charging section of the Act as well as the Penal Code so that at the time of framing of the charge, the Magistrate could have the necessary assistance. The complaint is to be signed by the officer before whom the offence is committed.

9. Jurisdiction of the court

9.1 Normally, the Magistrate in whose territorial jurisdiction an offence was committed assumes the authority of trying the case. For tax cases, the offence is committed at the place where a false return of income is submitted, though the return is prepared elsewhere or the

accounts are fabricated at some other place. A First Class Magistrate or a Metropolitan Magistrate should try the prosecution case under the direct tax laws. If a special economic offences court with specified jurisdiction is functioning, the complaint is to be filed before such a court.

10. Presumption of innocence

10.1 A criminal trial starts with a presumption of innocence in favour of the accused. This presumption has to be dislodged from the mind of the court by the prosecution by way of adducing evidence to convince the court beyond all reasonable doubt that the accused is guilty.

10.2 Although with the introduction of section 278E w.e.f. 10-9-1986, the onus of proving that there was no culpable mental state – that is, intention, motive or knowledge of a fact – is on the assessee, it is always safer in criminal cases to establish *mens rea* or a guilty mind or intention. While in civil cases, courts go by the principle of preponderance of probabilities, in criminal cases, the benefit of doubt goes to the accused and he cannot be convicted unless the charge is proved beyond reasonable doubt. For establishing a successful case, therefore, the Assessing Officer will have to be extremely methodical, watchful, vigilant and familiar with procedure and possible pitfalls while collecting and sifting evidence. It is absolutely essential that the Assessing Officer, at the early stages of the hearings, secures an unequivocal confirmation from the assessee that the return in question has been signed by the latter and that the signatures on the return are his. Such an unequivocal declaration from the assessee would considerably strengthen the case of the Department before the courts in as much as the onus to prove the signatures in the return beyond reasonable doubt would have been fully discharged.

11. Provisions relating to Prosecution under the Income Tax Act

| <u>Sl.No.</u> | <u>Section</u> | <u>Nature of Offence</u> | <u>Punishment (Rigorous imprisonment)</u> |
|---------------|-------------------------|---|---|
| 1. | 275A | Dealing with seized assets in contravention of the order made u/s 132(3) | Upto 2 years with fine |
| 2. | 275B (w.e.f. 1-6-02) | Failure to afford necessary facility to the Authorised Officer for inspection of books or other documents as required u/s 132(1)(iib) | Upto 2 years with fine |
| 3. | 276 | Removal, concealment, transfer or delivery of property to thwart tax recovery | Upto 2 years with fine |
| 4. | 276A | Failure to comply with the provisions of sec.178(1), and (3) by liquidator of a company | 6 months to 2 years |
| 5. | 276AB | Failure to comply with the provisions of sections 269UC, 269UE & 269UL | 6 months to 2 years with fine. |

| | | | |
|-----|---------|--|--|
| | | relating to acquisition of immovable property | |
| 6. | 276B | Failure to pay tax deducted at source under Chapter XVII-B or contravention of section 115-O | 3 months to 7 years with fine. |
| 7. | 276BB | Failure to pay the tax collected under the provisions of sec. 206C | 3 months to 7 years with fine. |
| 8. | 276C(1) | Willful attempt to evade tax, penalty or interest imposable under the Act a. where tax evaded exceeds Rs.1,00,000/- b. in other cases | 6 months to 7 years with fine. 3 months to 3 years with fine. |
| 9. | 276C(2) | Willful attempt to evade the payment of any tax, penalty or interest | 3 months to 3 years with fine. |
| 10. | 276CC | Willful failure to file return of income u/s139(1), or in response to notice u/s 142(1) or 148 a. where tax evaded exceeds Rs.1,00,000/- b. in other cases <u>Note:</u> No prosecution if RI is filed before the expiry of the asst. year or if the tax payable on regular asst. as reduced by TDS & advance tax does not exceed Rs.3,000/- | 6 months to 7 years with fine. 3 months to 3 years with fine. |
| 11. | 276CCC | Failure to furnish return for block period | 3 months to 3 years with fine |
| 12. | 276D | Willful failure to produce accounts and documents u/s142(1) or to get accounts audited u/s142(2A) | Upto 1 year and fine of Rs.4 to Rs.10 for every day of default |
| 13. | 277 | Making a false statement in verification or delivering a false account or statement a. where tax sought to be evaded exceeds Rs.1,00,000/- b. in other cases | 6 months to 7 years with fine. 3 months to 3 years with fine. |
| 14. | 278 | Abetment to make a false statement or declaration c. where tax, penalty or interest sought to be evaded exceeds Rs.1,00,000/- d. in other cases | 6 months to 7 years with fine. 3 months to 3 years with fine. |
| 15. | 278A | Second and subsequent offences u/s 276B, 276C(1), 276CC, 277 or 278 | 6 months to 7 years with fine |
| 16. | 280(1) | Disclosure of particulars by public servants in contravention of section 138(2). (Prosecution to be instituted with | Upto 6 months with fine |

| | | | |
|--|--|--|--|
| | | the previous approval of Central Government) | |
|--|--|--|--|

Note:- 1. As per the provisions of section 279A, the offences punishable u/s 276B, 276C, 276CC, 277 or 278 are non-cognizable offences.

2. If the penalty imposed u/s 271(1)(c) has been reduced or waived u/s 273A, no prosecution lies u/s 276C or 277 [sec. 279(1A)]

3. If a person has reasonable cause for the failures u/s 276A, 276AB or 276B, then no punishment can be awarded.

12. Offences by companies

12.1 If an offence is committed by a company, then the company as well as every person who, at the time of the offence being committed, was in charge of and responsible to the company for the conduct of its business, shall be deemed to be guilty and liable to be proceeded against and punished accordingly. However, if such person is able to prove that the offence was committed without his knowledge or that he had exercised all due diligence to prevent its commission, he is not liable to be punished. If it is proved that the offence committed by the company is with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such person would also be deemed to be guilty of the offence and shall be liable to be proceeded against. [Section 278B]

12.2 It is important to bring on record the names of the persons responsible – like Managing Director or Director (Finance) – so that action can be initiated against such persons. Action is to be initiated against the person responsible for the offence at the time of its commission and not the present incumbent.

13. Offences by Hindu Undivided Family

13.1 Where an offence is committed by a HUF, its karta shall be deemed to be guilty of the offence and he shall be proceeded against accordingly. If, however, the karta is able to prove that the offence was committed without his knowledge or that he had exercised due diligence to prevent its commission he will not be liable for any punishment. On the other hand, if it is established that any member of the HUF is guilty of the offence, prosecution proceedings would lie against him [Section .278C]

14. Provisions relating to prosecution under the Wealth-tax Act:-

| <u>Sl.No.</u> | <u>Section</u> | <u>Nature of Offence</u> | <u>Punishment (Rigorous</u> |
|---------------|----------------|--------------------------|-----------------------------|
|---------------|----------------|--------------------------|-----------------------------|

| | | | |
|-----|--------|--|--|
| | | | <u>imprisonment)</u> |
| 1. | 35A(1) | Willful attempt to evade tax, penalty or interest a. where the amount exceeds Rs.1,00,000/- b. in other cases | 6 months to 7 years with fine. 3 months to 3 years with fine. |
| 2. | 35A(2) | Willful attempt to evade the payment of tax, penalty or interest | 3 months to 3 years with fine. |
| 3. | 35B | Willful failure to file the return of net wealth u/s 14(1) or in response to notice u/s 14(2) or 17 a. where tax evaded exceeds Rs.1,00,000/- b. in other cases <u>Note:</u> No prosecution if the return of wealth is filed before the expiry of A.Y. or if tax payable on regular assessment does not exceed Rs.3,000/- | 6 months to 7 years with fine. 3 months to 3 years with fine. |
| 4. | 35C | Willful failure to produce the accounts, records or documents in response to notice u/s 16(4) | Upto 1 year and fine of Rs.4 to Rs.10 for every day of default |
| 5. | 35D | Making a false statement in verification (except u/s 34AB) or delivering a false account or statement a. where tax sought to be evaded exceeds Rs.1,00,000/- b. in other cases | 6 months to 7 years with fine. 3 months to 3 years with fine. |
| 6. | 35E | Making a false statement in a verification u/s 34AB | Upto 6 months with fine |
| 7. | 35EE | Failure on the part of a registered valuer to intimate the particulars of his conviction, etc. as required u/s 34 ACC | Upto 2 years with fine |
| 8. | 35EEE | Dealing with seized assets in contravention of the order made u/s 37A(1), second proviso or u/s 37A(3A) | Upto 2 years with fine |
| 9. | 35F | Abetment to make a false statement or declaration a. where tax, penalty or interest sought to be evaded exceeds Rs.1,00,000/- b. in other cases | 6 months to 7 years with fine. 3 months to 3 years with fine. |
| 10. | 35G | Second and subsequent offences u/s 35A(1), 35B, 35D or 35F | 6 months to 7 years with fine |

15. Provisions relating to prosecution under the Interest-tax Act

| Sl.No. | Section | Nature of Offence | Punishment (Rigorous imprisonment) |
|--------|---------|--|------------------------------------|
| 1. | 24 | Makes a false statement in verification or delivers a false account or statement | 3 months to 7 years with fine |
| 2. | 25 | Willful attempt to evade any tax, penalty or interest | 3 months to 7 years with fine |
| 3. | 26 | Abetment to make a false account, statement or declaration | 3 months to 7 years with fine |

16. Offences by credit institutions

16.1 *If an offence is committed by a credit institution, then the credit institution as well as every person who, at the time of the offence being committed, was in charge of and responsible to the credit institution, for the conduct of the business of such credit institution, shall be deemed to be guilty and liable to be proceeded against and punished accordingly. However, if such person is able to prove that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence, he will not liable to be proceeded against. If it is proved that the offence committed by the credit institution is with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer, such a person would also be deemed to be guilty of the offence and shall be liable to be proceeded against. [Sec. 26A of the Interest-tax Act]. The names of such persons who were holding these posts at the time of committing the offence should be brought on record so that action can be taken against them.*

17. Provisions relating to prosecution under the Expenditure-tax Act

(All offences are non-cognizable as per the provisions of section 29)

| Sl.No. | Section | Nature of Offence | Punishment (Rigorous imprisonment) |
|--------|---------|---|------------------------------------|
| 1. | 25 | Willful attempt to evade collection or payment of tax, penalty or interestL | 3 months to 7 years with fine |
| 2. | 26 | Failure to file the return as required u/s 8(1) or in response to notice u/s 8(2) | 3 months to 7 years with fine |
| 3. | 27 | Makes a false statement in verification or delivers a false account or statement | 3 months to 7 years with fine |
| 4. | 28 | Abetment to make a false account, statement or declaration | 3 months to 7 years with fine |

18. Compounding an offence

18.1 Under the provisions of section 279(2), the Chief Commissioner or Director-General can compound any offence either before or after the initiation of the prosecution proceedings. Similar provisions for compounding an offence are provided in the other direct tax laws.

18.2 However, the Board, by means of administrative guidelines issued vide Circular F.No.285/161 /90-IT(Inv.) dated 30th September 1994, has reintroduced the concept of technical and non-technical offences for the limited purpose of compounding the offenses. While the technical offences, viz., under the sections 276B and 276BB, can be compounded by the CCIT/DGIT, subject to the conditions laid down, all other offences can be compounded only with the previous approval of the Board. These guidelines deal with the conditions to be satisfied before compounding of the offences as also the computation of the compounding charges.

18.3 The conditions to be satisfied for compounding technical offences are as under:-

- i. The assessee should make a written request for compounding a technical offence.

- ii. The case should be considered for compounding only when the assessee has paid the amount of undisputed tax as well as interest and penalties relating to the default.
- iii. The assessee should state that he is willing to pay the prescribed compounding fee and prosecution establishment expenses, and the order should be passed only after such fee and expenses are paid.

18.4 *In addition, the following conditions should be satisfied cumulatively for the technical offences to be compounded by the CCIT or DGIT:-*

- i. it is the first offence by the assessee
- ii. the compounding charges do not exceed Rs.10 lakhs
- iii. the offence is compounded only before the filing of a complaint.

18.5 *In order to restrict prosecution to the really hard-core cases, if the CCIT/DGIT is not inclined to accede to the assessee's request for compounding even when the prescribed conditions are satisfied, the matter should be referred to the Board before rejection of the compounding petitions.*

19. Immunity from prosecution

19.1 *As per the provisions of section 291, the Central Government can grant immunity from prosecution for any offence under the Act, IPC or any other Central Act to a person, with a view to obtain evidence. This is subject to the condition that the person makes a full and true disclosure of all the circumstances relating to the concealment of income or evasion of payment of tax on income. If, after granting of immunity, it appears to the Central Government that the conditions have not been complied with, or the person is willfully concealing or giving false evidence, then a finding to this effect has to be recorded and the immunity granted is deemed to have been withdrawn. The concerned person can then be tried for the offence for which the immunity was granted.*

19.2 The power to grant immunity from prosecution also vests with the Settlement Commission by virtue of section 245 H, subject to conditions prescribed therein.

20. Relevant provisions of IPC for prosecutions arising out of Income tax proceedings

20.1 Although the Income-tax Act is almost a self contained code and there is a full Chapter on Offences and Prosecutions to deal with various contraventions, certain situations are not directly covered by the provisions of this Act and it is necessary to take recourse to the provisions of the Indian Penal Code. Also, generally the Department's case gets strengthened if suitable provisions of the Indian Penal Code are invoked along with the provisions of Income-tax Act to deal with certain offences covered by both enactments.

20.2 Section 278 of the Income tax Act deals with abetment in the matter of delivering an account or a statement or a declaration relating to income chargeable to tax. The provisions relating to abetment of an offence are dealt with in Chapter V of the Indian Penal Code. In particular sections 107, 108, 109 and 110 of IPC are important.

20.3 Section 277 of the Income tax Act deals with false verification in a statement. Section 178 IPC deals with refusal to take oath of affirmation when duly required to do so. Sec. 179 of IPC deals with refusal to answer a public servant who is authorised to ask questions and section 180 IPC deals with refusal to sign a statement. A false statement on oath and false information with an intent to cause a public servant to use his lawful power to injure another person are dealt with u/s 181 and 182 IPC.

20.4 Section 276D of the I.T. Act deals with the willful failure to produce books, documents etc., called for u/s 142(1). The provisions of Indian Penal Code relating to the contraventions of the direction of the public authorities are little more specific. Sec. 177 IPC deals with furnishing of false information. Sec. 191 IPC deals with furnishing false evidence. The difference between information and evidence is very crucial and it is very apt that the Indian Penal Code has provided for separate remedies. Sec. 192 IPC deals with fabrication of false evidence and Sec. 196 deals with using evidence known to be false.

20.5 While under the various direct tax enactments there is no direct remedy for dealing with a person absconding to avoid service of summons or preventing service of summons and there is only a fine provided for failure to appear in obedience to a summons, the Indian Penal Code has dealt with the offences relating to contempt of the lawful authority of a public servant in a more systematic way. Sec. 172 IPC deals with absconding to avoid service of summons or other proceedings. Sec. 173 IPC deals with preventing the service of summons or other proceedings. Sec. 174 IPC deals with non-

attendance in obedience to an order from a public servant. Sec. 175 IPC deals with omissions to produce documents before a public servant. Sec. 176 IPC deals with omission to give notice to a public servant by a person legally bound to give it.

20.6 Sec. 183 IPC deals with resistance to the taking of property by the public servant by lawful authority and Sec. 184 IPC deals with obstruction to the sale of such property by a public servant. There are no suitable provisions to deal with these situations under the Income tax Act.

20.7 Obstruction to the public servant in the discharge of his functions and omission to assist a public servant when bound by law to give such assistance are dealt with under sections 186 and 187 IPC. Disobedience to an order promulgated by a public servant is dealt with in Sec. 188 IPC. Threat of injury to a public servant is dealt with u/s 189 IPC. Cheating and cheating by impersonation are dealt with u/s 415/ 416 respectively of the IPC.

Chapter- 18

APPEALS AND REVISION

1. The provisions relating to Appeals and Revision under the Income-tax Act as provided in Chapter XX are as under:

| | | |
|----------------------|---|---|
| Sections 246 to 251 | - | Appeals to the CIT(Appeals). |
| Sections 252 to 255 | - | Appeals to the ITAT |
| Sections 256 to 260 | - | Reference to High Court (for orders passed by ITAT before 1-10-98) |
| Sections 260A & 260B | - | Appeals to High Court (w.e.f. 1-10-98) |
| Sections 261 & 262 | - | Appeals to the Supreme Court |
| Sections 263 & 264 | - | Revision by the CIT |

PART A : APPEALS TO THE COMMISSIONER OF INCOME-TAX (APPEALS)

2. Powers of the Commissioner of Income-tax (Appeals)

2.1 In an appeal against an order of assessment, the CIT(A) can confirm, reduce, enhance or annul the assessment. Similarly, in an order imposing a penalty, the CIT(A) can confirm, cancel or vary it so as to either enhance or reduce it.

2.2 The powers of the CIT(A) are co-terminus with the powers of the Assessing Officer. Thus if, before the disposal of the appeal, an audit objection is raised on an issue which is the subject matter of an appeal before the CIT(A), which requires the assessment to be enhanced, the feasibility of approaching the CIT(A) for this purpose can be considered by the Assessing Officer.

3. *Procedure for filing appeals*

3.1 The procedure for filing an appeal by the assessee before the CIT(Appeals) is laid out in section 249 and Rules 45 and 46. The appeal is to be filed in Form No. 35. This form along with the grounds of appeal appended thereto should be signed and verified by the person who is authorised to sign the return of income u/s 140. Non-compliance with these requirements

would make the appeal invalid. There is no provision for the CIT(Appeals) to call upon the appellant to rectify these mistakes.

4. Time limit for filing appeal

4.1 The appeal should be filed within 30 days of :-

- i. the date of service of the demand notice relating to an order of assessment or penalty
- ii. payment of tax deducted u/s 195(1)
- iii. intimation of the order sought to be appealed against

If a copy of the order is not served along with the demand notice, the time taken for obtaining the copy of the order should be excluded from the period of 30 days.

5. *Condonation of delay*

5.1 The CIT(Appeals) can condone the delay in filing the appeal if there is sufficient cause for the same. Although he is not bound to give an opportunity of hearing in the case of belated appeals, on grounds of equity, such opportunity should be given before a belated appeal is rejected. After the hearing, if the CIT(Appeals) is of the opinion that the delay should not be condoned, he should pass an order accordingly.

5.2 Where the CIT(Appeals) has condoned the delay and admitted the appeal, he should not only record the reasons for condoning the delay in the order sheet, but should also discuss the same in the appellate order. This measure is intended to enable the Department to decide whether the reasons recorded in the appellate order admitting the time-barred appeal should be made the subject of further appeal to the ITAT.

6. *Tax payable before filing the appeal*

6.1 An appeal cannot be admitted unless at the time of filing it the assessee has paid (a) the tax due on the returned income when such a return has been filed (b) an amount equal to the advance tax payable by him when no return is filed. The CIT(Appeals), however, can, on an application being made by the assessee, admit an appeal even if the condition at (b) is not fulfilled, for any good and sufficient reason to be recorded by him in writing. The CIT (Appeals) has no powers to admit an appeal where the tax due on returned income has not been paid.

7. *Fee for filing appeal*

7.1 A fee as under should accompany the memorandum of appeal in Form No. 35:-

- | | | | |
|----|---|---|---------|
| a. | where assessed income is Rs.1,00,000 or less | - | |
| | Rs.250 | | |
| b. | where assessed income exceeds Rs.1,00,000 | | |
| | but does not exceed Rs.2,00,000 | - | Rs.500 |
| c. | where assessed income exceeds Rs.2,00,000 | - | Rs.1000 |
| d. | where the appeal has no nexus with the income | - | Rs.250 |

7.2 The fee should be credited in a branch of the authorised bank after obtaining a challan from the Assessing Officer and a copy of the challan should be sent to the CIT(Appeals).

8. Scrutiny of appeal petitions

8.1 The memorandum of appeal along with the grounds of appeal is to be scrutinised in the office of the CIT(Appeals). In case of any defects, the memoranda is to be promptly returned to the appellant along with form ITNS 68, which indicates the defects. The defects could be of the following nature:-

- i. appeal not filed in the prescribed form
- ii. the form not properly filled in / verified
- iii. not accompanied with the proper fees
- iv. demand notice in original / copy of the relevant order not enclosed
- v. grounds of appeal not specifically stated

The appellant can resubmit the memorandum of appeal after rectifying the defects. If the appeal is found in order, it is registered by making necessary entries in the Register of Appeals maintained by the CIT(Appeals). Entries in the Register are made serially and in strict chronological order. The serial number of the entry in this register, e.g., No.____ of 20__-20__) will constitute the number of the appeal.

8.2 The order sheet in the appeal folder can be maintained in the following format so that all the required basic details are available at one place:

Order Sheet

I.T.A. No.

Brief particulars of appeal

- i. Name of Income-tax Circle / Ward
- ii. Name & Address of appellant
- iii. Permanent Account Number
- iv. Status
- v. Representative
- vi. Date of order appealed against
- vii. Date of service
- viii. Date of receipt of appeal petition
- ix. Is appeal in time?
- x. Has tax on admitted income / penalty been paid?
- xi. Is the appeal properly stamped and verified?
- xii. Miscellaneous information:
 - a. Year of assessment
 - b. Section under which impugned order passed
 - c. Total income / net wealth
- xiii. Date of forwarding ITNS 51 to AO
- xiv. Date of receipt of report from AO
 - a. whether appeal is in time
 - b. whether admitted tax paid
 - c. whether representation claimed
 - d. whether records sent

8.3 The next action to be taken in the office of the CIT(Appeals) is to send an intimation to the Assessing Officer in form ITNS 51 enclosing a copy of the appeal memo. The reverse of this form requires certain data or particulars which are to be filled by the Assessing Officer and returned to the CIT(Appeals). The following particulars are to be filled up by the Assessing Officer in this form:-

- i. PAN of the appellant
- ii. The section under which the order appealed against was framed
- iii. The date of service of demand notice / other orders appealed against
- iv. Date of application for a copy of the asst. order if the copy was not supplied along with the demand notice / date of delivery of the same
- v. Whether the admitted tax / advance tax payable has been paid by the appellant
- vi. Whether the appeal is within the limitation period or not
- vii. Whether the assessing Officer desires to be present at the hearing

8.4 In cases where the Assessing Officer feels that personal representation is not necessary, he may send a written statement meeting the contentions of the appellant, if they have not been dealt with clearly in the assessment order itself. If any enhancement is required to the assessed income, this fact can also be brought to the notice of the CIT(Appeals).

9. *Fixation of appeals*

9.1 After receipt of the form ITNS 51 from the Assessing Officer, CIT(Appeals) fixes the appeal for hearing. Since the hearing before the CIT(Appeals) is a quasi-judicial proceeding, it must conform to the rules of natural justice. Section 250(1) makes it obligatory on the CIT(Appeals) to give a notice of hearing to the appellant as well as the Assessing Officer against whose order the appeal is preferred. The appellant is informed of the date and place of hearing by means of Form ITNS 37. The Assessing Officer is intimated by means of Form ITNS 52. The notice of hearing should be sent sufficiently in advance to enable the appellant and the Assessing Officer to be adequately prepared for the hearing. The place of hearing can either be the headquarters of the CIT(Appeals) or if the jurisdiction extends beyond his headquarters, the hearing could be held at any other place within his jurisdiction. The preference of the appellant should be borne in mind while deciding the venue.

9.2 Section 250(2) empowers both, the appellant and the Assessing Officer, to be heard either in person or by an authorised representative. Normally the case will be represented by the Assessing Officer in whose jurisdiction the case presently lies, but in cases involving difficult points of law and facts, the presence of the Assessing Officer who actually passed the assessment order may be necessary. In such cases, the range JCIT / Addl. CIT should be informed so that necessary action can be taken in this regard.

9.3 Clear instructions of the Board exist on the subject of taking up of appeals in a chronological order. The exceptions to this are made in the following circumstances:-

- i. When the revenue locked up is large and the Commissioner of Income-tax is of the opinion that the appeal may be taken up out of turn
- ii. Two or more appeals of the same assessee for different assessment years may be taken up by the appellate authority when the point involved is the same
- iii. In mofussil charges where the appellate authority visits an Income-tax office on tour, the chronological order may be observed in respect of that office. While at headquarters, all appeals will be heard by the appellate authority in strict chronological order.

10. Hearing of third party

10.1 Explanation 3 to section 153 provides that where any income has been assessed as a part of the total income of any person, but the appellate or revisionary authority excludes the same from that person's total income and holds it to be the income of another person, then, the assessment of such income in the hands of the other person, shall be deemed to be made, "in consequence of or to give effect to any finding or direction" for the purpose of section 150. One of the pre-requisites for treating such income as the income of the other person is that he should have been given an opportunity of being heard in respect of the matter by the appellate or revisionary authority

11. Procedure regarding submission of records

11.1 When an appeal is fixed, the intimation is sent to the Assessing Officer concerned. On the receipt of such intimation, the Assessing Officer should send the case records to the appellate authority well in advance. The records to be sent are:-

- i. the assessment records
- ii. the permanent records
- iii. the miscellaneous records for the assessment year and earlier two years

It should, however, be noted that confidential records such as inspection notes or correspondence with higher authorities should not be sent to the appellate authority.

12. Remand reports

12.1 As per the provisions of section 250(4), the CIT(Appeals) is empowered to make further inquiry as he thinks fit as also to remand the case to the Assessing Officer on certain points and call for a report. In such cases, the Assessing Officer, as per the directions of the CIT(Appeals), has to examine the points on which inquiry has been sought afresh. He submits the results of his examination to the CIT(Appeals) through a report known as remand report. For this purpose, if necessary, the Assessing Officer can also call for the books of accounts of the assessee to conduct inquiries. It is imperative that the remand report should be sent in time as the decision of the appellate authority may be held up on account of non-receipt of the same. In case the Assessing Officer cannot send the remand report in time, he should seek further extension of time

from the appellate authority concerned. All cases of remand reports should be entered by the Assessing Officer in a Register of Remand Reports which gives the date of receipt of the remand order and date of submission of the report.

12.2 The Assessing Officer should submit the draft remand report for the approval of the JCIT / Addl. CIT as it is necessary to check:-

- i. whether the strongest case on the facts found has been made out
- ii. that no concession (may be unwittingly) has been made in the report which may be used against the Department

In all important appeals, the Assessing Officer should be present at the hearing to safeguard against misrepresentation by the appellant as also to aid the appellate authority by pointing out the relevant papers and records.

13. Adducing fresh evidence in appeal

13.1 The CIT(Appeals) cannot, except in circumstances indicated in Rule 46 (A), admit any fresh or additional evidence, which has not been produced earlier before the Assessing Officer. The circumstances indicated in Rule 46(A) are as under:-

- a. Where the Assessing Officer has refused to admit evidence which ought to have been admitted
- b. Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer
- c. Where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal
- d. Where the assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

13.2 The CIT (Appeals) should record in writing the reasons for admitting the additional evidence, and also give a reasonable opportunity to the Assessing Officer not only to examine the evidence but also to produce any evidence or document in rebuttal of the additional evidence produced by the appellant. At the same time, the CIT (Appeals) is empowered to call for any document or examination of any witness to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty or imposition of the penalty u/s 271.

13.3 In cases covered under Rule 46A, the Assessing Officer should examine the new evidence or witness produced by the appellant and bring the results of his examination to the notice of the appellate authority. Where the Assessing Officer does not want to be present at the hearing, he should send a written statement on the points agitated in appeal to the CIT(Appeals), explaining his stand, along with the records.

14. When appellant does not appear

14.1 An appeal to the CIT(Appeals) cannot be dismissed for default of non-appearance. It is always to be decided on merits whether the appellant appears or not. If the notice of hearing has not been served on the appellant in time to enable him to appear in person or through an authorised representative, the appeal is to be adjourned and a fresh date given to the appellant.

14.2 In case an appellant does not put in appearance at the time fixed for hearing, it is not proper for the appellate authority to pass his order without waiting for a reasonable time. He should at least wait till the end of the day to see whether any application for adjournment has been received from the appellant during the course of that day. If an appellate authority rejects an application for adjournment, in all fairness, he should inform the appellant that he would be prepared to give a hearing during the course of the day. In such cases, the appellate authority should wait till the evening before he passes the order. In all such cases, the CIT(A) should be able to show that the appellant was allowed a reasonable opportunity before the ex-parte order was passed.

15. *Appellate order*

15.1 The CIT(Appeals) should pass the order in writing after hearing the appeal. While writing the order, the following suggestions deserve careful consideration:-

- i. The appellate order should *inter alia* contain:
 - a. Points for determination
 - b. Decisions thereon
 - c. Reasons for the decision
 - d. Every argument referred to in the appeal must be met
 - e. Relief to which the appellant is entitled
- ii. The appellate orders should not be unnecessarily lengthy. reproduction in the appellate order of all the facts noted by the Assessing Officer in the assessment order is unwarranted. If the appellate authority does not admit any additional evidence or, does not wish to refer to other evidence already on record and if his arguments are the same as those of the Assessing Officer, he can only mention the contention of the appellant and state that he agrees with the order of the Assessing Officer.

15.2 The CIT(Appeals) should not refer to the Departmental papers like Board's Instructions etc., which do not form part of the assessment records, and as such have no legal significance. However, the Circulars issued for the information of the public setting out the Departmental stand can be referred to in the appellate order. Incidentally, it should be noted that in an appeal against an order u/s 147, it is not open for the appellant to agitate any issue arising out of the original assessment. Again, when the income of a firm or an AOP is ordered to be varied in appeal, the CIT(A) should authorise the Assessing Officer to make consequential amendments to the assessments made on the partner of the firm or member of the AOP, as the case may be.

16. *Date of appellate order*

16.1 The date of an appellate order is the date on which it is signed by the appellate authority. The same date must be entered against the item 'date of order' at the top of Form ITNS 55, which is the appellate order format. After the appellate order has been signed by the CIT(Appeals), it is entered in the Register of Disposals (ITNS 134). While the Register of Appeals (ITNS 133) has 10 columns, the Register of Disposals has 18 columns. These columns are to be filled up by the office of the CIT (Appeals).

17. Appellate order – time for passing the order

17.1 The Board has issued circulars from time to time to state that the appellate authority should not delay the passing of the appellate orders after the hearings have been concluded. Instructions stipulate that orders should be passed within 10 days of the hearings of the appeals by the CIT (Appeals). If for any reason it is not possible to do so, the reasons for the delay should be recorded by the CIT (Appeals) on the file itself.

17.2 In addition section 250(6A) lays down that, if possible, the appeal should be heard and decided within one year from the end of the financial year in which such appeal is filed.

18. Separate orders for different appeals

18.1 It is desirable that the CIT (Appeals) passes separate orders in each appeal. For the sake of convenience, if a single order is passed in a number of appeals, then as many copies of the orders as the number of appeals disposed of by the consolidated order should be sent to the appellant and the CIT by the CIT (Appeals), free of charge.

19. Supply of appellate orders

19.1 As soon as the appellate order is passed, a copy of the same should be sent to the appellant free of cost either by registered post or through a notice server, without waiting for the appellant to file an application in this regard. Copies of the appellate orders should also be sent to the Commissioner of Income-tax (in fortnightly batches) and the Assessing Officer with current jurisdiction over the case and not to Officers who had jurisdiction at the time of passing of the order appealed against. This is particularly necessary to save loss of time for proper authorisation, and filing of a second appeal if found necessary.

20. Acknowledgment regarding receipt of appellate order by the appellant

20.1 The acknowledgment of service of the appellate order should be placed on the file. The date of service of the appellate order and the fact that the acknowledgment has been placed on the file should be noted in the order sheet and initialed by the CIT(Appeals). This exercise is important as it will enable the Department to verify if second appeals filed by the assessee before the Appellate Tribunal are within the limitation period allowed under the statute.

21. Authentication of free copies supplied to the appellant

21.1 If the copy of the appellate order is brought by the appellant to the CIT(Appeals) for certification as a true copy, no copying or searching fee should be demanded. Applications for authentication of the free copy are however, required to be stamped under article (a) of Schedule II of the Court Fees Act. Copies can be authenticated by the Gazetted Personal Assistant or the Administrative Officer.

22. *Disposal of appeals involving a point already before ITAT or High Court*

22.1 When an appellant files two or more appeals in respect of different years in which identical points are involved, the CIT(Appeals) may not like to keep these appeals pending on his own. He may, however, do so in case a request is made by the appellant or by the Department at any time before the orders are passed by him to the effect that appeals may be heard after the decision on the point is rendered by the ITAT or the High Court. However, these guidelines may not hold good in all situations. For example, in charges where there is significant back-log of cases referred to the High Court, it may perhaps not be expedient for the CIT(Appeals) to withhold the decision on the appeal filed till the High Court renders its judgment.

23. *Hearing of appeals by CIT(Appeals) against his own orders passed as an Addl./Joint CIT or Assessing Officer*

23.1 The CIT(Appeals) should not hear appeals against his own orders passed as an Addl./Joint Commissioner or Assessing Officer. In such cases, the matter should be referred to the CCIT for having the appeals transferred to another CIT(Appeals).

24. *Action to be taken on receipt of the appellate order*

24.1 On receipt of the appellate order in the Assessing Officer's office, immediate steps should be taken to revise the assessment in the light of this order. The revision order should be passed in ITNS 158 giving the particulars of income originally assessed, and reduced / enhanced in appeal under each head, and the revised total income. Appellate orders should be given effect with extraordinary promptness, because of the interest payable u/s 244A. If any refund is due to the assessee because of the revision of total income as a result of the appellate order, the refund order should be issued within seven days of passing the order giving appeal effect by the Assessing Officer. In case the revision results in additional demand, a demand notice for the amount along with the challan should be sent to the assessee. The revised demand should be entered in the appropriate section of the demand and collection register.

25. *Scrutiny of appellate orders*

25.1 It is primarily the duty of the Assessing Officer to scrutinize the appellate order to ascertain if all or some of the decisions of the CIT(Appeals) are unfavourable to the Department and a second appeal to the Appellate Tribunal is necessary. If so, it should be brought to the notice of the Commissioner of Income-tax through the Range JCIT /

Addl. CIT in the form of a report called the appeal scrutiny report. This report contains, *inter alia*, the details of the assessee and appellate order; the Assessing Officer's remarks on the points allowed by the CIT(Appeals) and the recommendation of the range JCIT / Addl. CIT. The scrutiny report should also contain a conspicuous column giving the date on which limitation in the particular case ends. Where the Assessing Officer suggests second appeal, he may also have to submit draft grounds of appeal.

25.2 The above report, along with the recommendations of the JCIT /Addl. CIT is scrutinised in the judicial section of the Commissioner's office to decide whether second appeal should be filed or not. The report, along with the records and the notings of the judicial section are put up to the Commissioner, who is the final authority for deciding whether the Assessing Officer should or should not file a second appeal before the Income-tax Appellate Tribunal.

26. Monetary limits for filing departmental appeals

26.1 The monetary limits for filing departmental appeals has been laid down in Instruction No. 1979 dated 27-03-2000, as per which, the tax effect should exceed the following monetary limits:-

| | | |
|-------------|------------------------------------|--------------------|
| i. | Appeal before ITAT | Rs.1,00,000 |
| ii. | Appeal before High Court | Rs.2,00,000 |
| iii. | Appeal in the Supreme Court | Rs.5,00,000 |

However, this ceiling limit would not be apply in the following cases wherein the adverse judgments should be contested irrespective of revenue effect:-

- a. where a Revenue Audit objection on the issue involved in the case has been accepted by the Department
- b. where the Board's order, notification, instruction or circular is the subject matter of an adverse decision
- c. where prosecution proceedings are contemplated against the assessee
- d. where the constitutional validity of the provisions of the Act are under challenge

26A. Transfer of appeals

With the amendment of section 120 by the Amending Act 1987, the CCIT or DG can transfer the jurisdiction of appeals from one CIT(A) to another. In case the transfer involves CITs(A) coming under the jurisdiction of different CCITs, the transfer of jurisdiction is to take place with the concurrence of both the CCITs.

27.1 Registers to be maintained by the CIT(Appeals)

1. Register of appeals

ITNS 133

| Sl. No | Date of receipt of appeal | Name and address of the assessee | GIR/PAN No. | Name and designation of the officer against whose decision appeal is filed |
|--------|---------------------------|----------------------------------|-------------|--|
| 1 | 2 | 3 | 4 | 5 |

| Order against which the petition is made (Quote section) | The year of assessment to which the appeal relates | Date on which appeal memo was sent to ITO | Date of return of appeal memo by ITO | Date of disposal No. in disposal register (if appeal was transferred, state to whom quote Board's order |
|--|--|---|--------------------------------------|---|
| 6 | 7 | 8 | 9 | 10 |

2. Register of disposals

ITNS 134

| Sl. No | No. of Appeal Register with the year of filing | Name and designation of the assessee | Name & designation of the officer against whose decision appeal is filed | Details of the order appealed against | Date of last hearing | Date of passing orders |
|--------|--|--------------------------------------|--|---------------------------------------|----------------------|------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |

| Assessment | Assessment | Assessment | Assessment | Penalties | Penalties |
|---|--------------------------------------|-------------------------------------|---------------------------------------|--|--|
| Annulled/ Reduced/ Enhanced/ Set-aside/ Confirmed | If annulled amount of tax discharged | If reduced amount of income reduced | If enhanced amount of income enhanced | Confirmed / Cancelled/ Enhanced/ Reduced | If cancelled or reduced amount of penalty discharged |
| 8 | 9 | 10 | 11 | 12 | 13 |

27.2 Appeal Register to be maintained by the Assessing Officer ITNS 61

| Sl. No | Date of receipt of the appeal petition | Name and address of the assessee and also his PAN | Designation of the officer against whose decision the appeal is filed | Section of the Act against which the petition is made. | Date of the appellate order |
|--------|--|---|---|--|-----------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 |

| Date of receipt of the appellate order by the AO | Date of revision | Assessment/Penalty whether annulled, cancelled, reduced, enhanced, set aside or confirmed and amount of tax/penalty discharged or extra amount demanded | Refunds – whether confirmed, cancelled or varied | Amount of refund allowed | Date of refund order/date of issue of demand notice for additional demand raised. |
|---|-------------------------|--|---|---------------------------------|--|
| 7 | 8 | 9 | 10 | 11 | 12 |

28. Software for the office of CIT (Appeals)

28.1 In the context of computerization of all possible aspects of Department's work, the work relating to the office of the CIT(A) has also been incorporated in the softwares under use in the Income tax department. There are essentially two packages which are relevant to the CIT(A):-

- i. Automation of the CIT(A) office software for stand-alone computers
- ii. Assessment Information System (AST) which is a comprehensive software being used by various officers of the Department for a number of functions in a networked environment.

28.2 A stand alone software has been developed for maintaining the records of the office of the CIT (Appeals). Data obtained from the appeals filed by the appellants is entered into the Appeals Register (ITNS-133). From this data, various reports are generated, viz.:-

- iii. Confirmation memos of appeals
- iv. Pendency reports
- v. Fixation schedules and printing of hearing notices
- vi. Appeal orders (ITNS-55)
- vii. Register of Disposals
- viii. Automatic generation of CAP II / M15A / M22 / Statistical Analysis.

28.3 The menu driven software is to be loaded on to the computers used by the CIT(Appeals). The software is activated by selecting and clicking on 'software for CIT (Appeals)' in the programs menu, emanating from the start button.

28.4 When the software is activated for the first time, the designation and address have to be registered, to enable all reports to quote these details. Also the designations of the Assessing Officers have to be entered, before data entry can commence falling with the jurisdiction of CIT(A).

Data Entry

28.5 The form for the original entry of data is the Register of Appeals. On receipt of a new appeal, the menu option- 'add new appeals' is clicked to obtain the entry screen. The following entries are to be made:-

- i. Appeal number
- ii. Whether it is a transfer entry
- iii. Date of filing of appeals
- iv. Category for IT / WT / GT / ST / IN

- v. Category for CC / SS / CO / OT / BA (Central Circle, Search & Seizure, Companies, Others & Block assessments)
- vi. Particulars of the assessee and the assessment, i.e., name and address, PAN, section, assessed tax, etc.,
- vii. Name of the Assessing Officer, designation and city.
- viii. The user is then required to confirm all the entries and the data is saved.

28.6 Through an edit option, changes can be made in the entries. However, deletion of appeals, once entered, is not permitted. Fixation of hearings and printing of hearing notices are provided for.

28.7 After the hearing has been completed, the status of the appeal must be changed from 'pending' to 'disposed' or 'remand'. The Disposal Register gets automatically created and updated from here, and the user is required to give the disposal number in that register. The first page of the appeal order (ITNS-55) can now be generated.

28.8 Once the appeal order is served, the date of service is to be entered in the Disposal Register.

Reports

28.9 The following reports can be generated from the data entered:-

- i. Appeal confirmation memos
- ii. By giving the appeal number, the first page of the appeal memo, giving all particulars of the case, can be printed.
- iii. File covers and note sheet
- iv. CAP-II, M-15A, M22 & Statistical Report
- v. By feeding in the period, reports relating to it are generated
- vi. Pendency reports
- vii. Category wise pendency reports can be generated, e.g., date wise, city wise, officer wise, section wise, high or low demand wise, alphabet wise, etc.
- viii. Disposal reports
- ix. Both monthly appellants batches and remand orders with due dates, can be generated.

Back up

28.10 Finally the user is required to take regular back up of his data to a floppy disk. The schedule of back up must be strictly adhered to.

29. Computerisation of work in the Commissioner of Income-tax (Appeals) office

29.1 AST Software also has the functionality required for computerisation of the work of the office of CIT(A). Since this is an integrated software for PCs on the network, it is necessary that every officer obtains an employee code from the RCC concerned. If a CIT(A) already has an employee code taken under a different RCC, he should take steps to see that his employee code is transferred to the RCC to which he is attached by writing to the RCC. The CIT(A) should also send the prescribed form to the RCC and get his role as CIT(A) assigned to him by the System Administrator of the

RCC concerned. The System Administrator will inform the CIT(A) the code that he has to use to access the ITD applications.

29.2 The CIT(A) can use the ITD Applications for the following purposes:-

- i. Monitoring first appeal details
- ii. Tracking the progress of appeals
- iii. Scheduling appeals
- iv. Recording the outcome of the hearing

AST provides two registers relevant to CIT(A), namely Appeal Register and Fixation Register.

29.3 In AST the classification of appeals are made in two groups, viz., “Linked Appeals” and “Unlinked Appeals”. Linked Appeals relate to cases whose assessments are completed through the AST module. In the case of linked appeals, the system determines and fills up in the computer register the values of the fields ‘Time Barred Appeal’ and ‘Return tax not paid’ automatically. One essential pre-requisite is that the PAN should be entered when the appeal is filed. Unlinked appeals are cases whose assessments were completed manually. In these appeals, the CIT(A) office will have to fill up the columns relating the ‘time barred appeal’ and ‘return tax not paid’ manually, while making entries.

PART B : APPEALS TO THE INCOME-TAX APPELLATE TRIBUNAL

1. Authorisation

1.1 Appeals to the ITAT are governed by section 253. The Department as well as the assessee can file an appeal before the ITAT. Sub-section 2 of this section empowers the Commissioner to direct the Assessing Officer to file an appeal to the ITAT against any order passed by the CIT(Appeals). On being authorised by the Commissioner to file the appeal, the Assessing Officer having the jurisdiction over the case at the time of authorisation files the appeal in triplicate in Form No. 36.

2. Time limit for filing the appeal

2.1 Section 253(3) lays down the limitation period within which the appeal to the ITAT must be filed. This period is sixty days from the date on which the order sought to be appealed against is communicated to the assessee or to the Commissioner, as the case may be. In case the filing of an appeal has been postponed till the last day of limitation, it may be presented till midnight of that day even outside the office hours, at the residence of the Registrar etc. of the ITAT.

2.2 Under Section 253(5), the ITAT is empowered to admit an appeal after the expiry of 60 days if it is satisfied that there was sufficient cause for not presenting it within that period. This condonation of the time limit is applicable for both the departmental as well as the assessee's appeals.

3. Procedure for filing the departmental appeal

3.1 The Departmental appeal to the ITAT should be filed in triplicate in Form No. 36 and should be signed and verified by the Assessing Officer. Certain enclosures that are to be filed along with the memorandum of appeal are as under:-

- i. Two copies of the appellate order appealed against, at least one of which must be a certified copy
- ii. Two certified copies of the relevant order of the Assessing Officer
- iii. A certified copy of the order of the Commissioner directing that an appeal be preferred
- iv. A certificate signed by the Commissioner stating the date when the CIT(Appeals) order appealed against was communicated to him
- v. Grounds of appeal signed by the Assessing Officer
- vi. Statement of facts signed by the Assessing Officer
- vii. Two copies of the assessee's grounds of appeal filed before the CIT(Appeals)
- viii. Two copies of the assessee's statement of facts filed before the CIT(Appeals)

The ITAT may, in its discretion, accept the memorandum of appeal, which is not accompanied by all or any of the enclosures, referred to above.

3.2 The grounds of appeal are prepared in the judicial section of the Commissioner's office, although in some cases, the Assessing Officer is asked to prepare the same. The grounds should be brief and not argumentative and should be serially numbered. According to Rule 10 of the Income-tax (Appellate Tribunal) Rules, an affidavit should be filed by the Assessing Officer if a fact which cannot be borne out by or is contrary to the records is alleged by him.

3.3 After the appeal is registered in the ITAT, a copy of the grounds of appeal is sent to the assessee concerned by the Registrar or Asst. Registrar of the ITAT.

4. Preparation of paper-book by the Assessing Officer

4.1 The Assessing Officer can file a paper-book within a month of the filing of the appeal in accordance with Rule 18 of the I.T. (Appellate Tribunal) Rules. At least five copies of the paper-book should be prepared - three copies to be submitted to the ITAT, and one each for the Departmental Representative and CIT's file in the judicial section. Since the Tribunal does not normally go through the whole record of the assessee before it, the paper-book submitted by the Assessing Officer must be correct and complete. Such paper-book need not contain the copies of the assessment order, appellate order etc., which form part of the memorandum of appeal already filed. But it should invariably contain copies of the documents, statements of witnesses etc., referred to in the assessment order or appellate order, besides the copies of the documents or accounts on record which would be useful in making out the case of the Department or in defending the assessment order. In all cases, the copies of relevant entries on the order sheet, particularly if they are signed by the assessee or his representative can be included. The pages should be serially numbered and prefaced by a page-wise indexing of the contents of the paper book. Confidential documents or internal correspondence should not be included. If necessary, such papers can be brought to the notice of the Departmental Representative in the brief.

5. Brief to the Departmental Representative

5.1 The Assessing Officer should send a brief to the Departmental Representative within 3 months of the filing of the appeal. After indicating the appeal number and the date of filing of appeal, the brief should include reference to the case laws, orders and facts favourable to the Department not discussed or inadequately discussed in the assessment order or the order of the CIT(Appeals). The brief should also highlight the documents and evidence on record in the custody of the Department but not fully discussed by CIT (Appeals). The photocopies of such documents should invariably be annexed to the brief. In search and seizure cases and other investigation cases involving high demand, the brief may be prepared in consultation with the Officer who passed the assessment order. It should highlight any important observation made by the superior officers while recommending or authorising the appeal.

6. Procedure for assessee to file the appeal

6.1 The procedure for filing of the assessee's appeal before the ITAT is similar. The memorandum of appeal in Form No. 36 is to be filed in triplicate along with the following enclosures:-

- i. Two copies of appellate order, at least one of which must be a certified copy
- ii. Two copies of the relevant order of the Assessing Officer
- iii. Challan showing the payment of the prescribed fee as mentioned in sec.253(6)
- iv. Grounds of appeal
- v. Statement of facts
- vi. Two copies of the grounds of appeal filed before the CIT(Appeals)
- vii. Two copies of the statement of facts, if any, filed before the CIT(Appeals)

6.2 The Registrar or the Asst. Registrar as the case may be, after registering an appeal from the assessee will supply a copy of the grounds of appeal to the concerned Assessing Officer directly.

7. Memorandum of cross objections

7.1 As per the provisions of section 253(4), the assessee or the Assessing Officer can file a memorandum of cross objections in Form No. 36A within 30 days of receipt of notice that an appeal against the order of the CIT(Appeals) has been filed by the Department or the assessee as the case may be. This memorandum may challenge any part of the order of the CIT(Appeals) irrespective of whether a regular appeal has been filed or not. This memorandum of cross objections will be treated and disposed of as an appeal presented within the time specified in section 253(3).

7.2 The Assessing Officer is not required to take the concurrence of the Commissioner in filing the memorandum of cross-objections. A decision in this regard is to be taken by the Assessing Officer himself preferably with the administrative approval of the range JCIT/Addl. CIT. As a general guideline, some of the occasions when such cross objections may be filed are suggested below:-

viii. On receipt of intimation of the filing of an appeal by the assessee and the notice in terms of section 253(4), the Assessing Officer should, in a case where the Departmental appeal to the Tribunal has not been filed because it was not considered worthwhile, report the matter to the Commissioner. He should obtain orders as to whether on the appellate order having been taken by the assessee before the Tribunal, the Department's grounds should be set out in a cross objection

ix. There may be other cases when it becomes necessary for the Department to file a cross appeal; for example, when the CIT(Appeals) has decided the issue in favour of the Department. In doing so, however, he may have recorded certain findings and arguments against the Department. These may not necessitate filing of a Departmental appeal. On the assessee taking up the issue further, however, such findings or arguments must be challenged. This should be done through a memorandum of cross objections. In the absence of the same, the Tribunal may infer that the adverse comments in the CIT(Appeals)'s order have been accepted by the Department.

x. In the cross objections, the alternative contentions of the department not considered by the CIT(Appeals) while deciding the appeal, can also be taken up.

8. Functions of the Departmental Representative

8.1 The function of the Departmental Representative is primarily to represent the Department before the Tribunal. The Departmental Representative assists the Tribunal in the disposal of appeals, cross objections and miscellaneous applications. He makes submissions on behalf of the Department. His functions commence the moment an appeal is filed in the Registry of the Tribunal, either by the Department or by the assessee.

9. Organisation of the Departmental Representative Office

9.1 The office is generally headed by a CIT(DR)(ITAT). The post of CIT(DR)(ITAT) is different from the CIT(DR) who is authorised to present the Department's case before the Settlement Commission. The CIT(DR)(ITAT) is assisted by the requisite number of Addl. / Joint Commissioners as also Deputy/Asst. Commissioners depending on the number of benches of the Tribunal in the station and their workload. The Addl. / Joint Commissioners are known as Senior Authorised Representatives (Sr.AR) and the Deputy/Asst. Commissioners are known as Junior Authorised Representatives (Jr. AR). A general term used for both the Authorised Representatives is Departmental Representative (DR). For the

effective performance of functions, all these functionaries are supported by Ministerial and group 'D' staff.

10. Procedure in DR's office on receipt of memo of appeal

10.1 In respect of Departmental appeals, the Assessing Officer should forward one set of appeal papers to the DR. In the DR's office, these papers are received by the receipt clerk, who, after entering these papers in the receipt register, should put up the same to the CIT(DR)/Senior AR in charge of administration. After these papers have been perused by the CIT/Sr. AR(Admn), the receipt clerk should pass them on to the 'filing clerk'. The latter should keep these papers in his custody. Depending on the number of Departmental appeals filed, the filing clerk should visit the office of the ITAT once or twice a week. He should note the appeal numbers allotted to the Departmental appeals. After marking the Departmental appeal papers in his custody with these numbers, he should open files and arrange them in serial order of appeal numbers. He should prepare suitable bundles of such appeal files, each such bundle containing about 50 files. On the top of each bundle, he should stick a paper indicating the appeal numbers. This paper will also serve as an index for tracing out the appeal file when subsequently required. These bundles, serially arranged and indexed, should be placed in a rack provided for this purpose.

10.2 In multi-bench stations, the Registry of the Tribunal also specifies the bench to which the appeal is allocated. This is done at the time of allotment of the appeal number. In multi-bench stations, therefore, the appeal files should immediately be allocated to the bench clerks concerned

10.3 As regards the assessee's appeals, the appeal number would already have been allotted by the ITAT. After perusal of the appeal papers by the CIT(DR)/Sr. AR(Admn), the receipt clerk should pass on these papers to the filing clerk who will place them in the appropriate file. The filing clerk will make available the file when the appeal comes up for hearing before the ITAT. In case cross objections are filed by the Assessing Officer, the filing clerk should link these papers with the appeal papers.

11. Procedure on receipt of brief / paper book in the DR's office

11.1 When the brief / paper book is received by the receipt clerk in the DR's office, he will pass on the same to the filing clerk after its perusal by the AR(Admn). The filing clerk should link this brief / paper book with the original appeal papers already available with him and keep the same in safe custody so that the same can be made available to the DR subsequently when the appeal comes up for hearing before the ITAT.

12. Procedure on receipt of notice of hearing

12.1 The DR's office normally has one bench clerk for every bench of the ITAT. When an appeal is posted for hearing by the ITAT, a notice is issued well in advance of the hearing. The bench clerk concerned should ensure that he receives the notice of hearing at least three weeks in advance. The final cause list is received a week in advance which would be for the entire week for each bench.

12.2 On receipt of the notice of hearing, the bench clerk should verify whether the appeal file is complete. He should then put it up to the Sr. AR incharge of the bench with his comments regarding completeness of the papers, e.g. whether the set is complete and brief

and other papers have been received. The notice of hearing received from the ITAT should also be placed in this file. The Sr.AR will go through the file and see whether all necessary papers, brief and paper book, are in his file. He will also consider whether it is necessary to call for the assessment records. He will then issue necessary orders on the file. This exercise should be carried out at least two weeks in advance of the date of hearing, so that by the time the weekly cause list is received in the office of the DR, the files are ready for preparation of the representation by the DR. On receipt of the final weekly cause list, the Senior AR concerned will allocate the files amongst himself and the juniors working under him. At this stage he will verify whether the requisition for records has been fulfilled and if not, take up the matter with the Assessing Officer. In case the Assessing Officer has any practical difficulty in sending the assessment records, the DR should file an application for adjournment indicating the nature of the difficulty so that the bench may pass necessary orders and inform the assessee well in advance.

13. Procedure for adjourned matters

13.1 Where the hearing of an appeal is adjourned by the ITAT, the DR will return the appeal file, along with the assessment records to the bench clerk. An entry to this effect will be made by the DR in the file. In all cases, the DR will exercise his discretion with regard to retention of sensitive records and documents in his personal custody. The bench clerk will put up the file along with the assessment records etc. to the DR when the appeal comes up for the next hearing before the ITAT.

14. Daily fixation register

14.1 A daily fixation register is to be maintained by the bench clerk in which the relevant columns should be filled on receipt of the notice. When the cause list is received from the ITAT, the bench clerk will check up the entries made by him on the basis of the hearing notice and make necessary corrections, if required. The name of the DR who has to argue the case will be mentioned in col. 6. On receipt of the file from the DR, he will fill in col. 7. In cases where the appeal is adjourned, he will make necessary entries in col. 8. He will also simultaneously make entries in this register against the date to which that particular appeal has been adjourned. The format of the register is as under:

Date_____

Bench_____

| Sl. No | Appeal No. | Names of parties to the dispute | A.Y | Whether Asstt. Records / Other records received | Name of the AR to whom appeal marked | Whether the hearing in the case is over/if adjourned, date to which adjourned | Remarks |
|---------------|-------------------|--|------------|--|---|--|----------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |

15. Procedure on conclusion of hearing

15.1 In a case where an appeal has been finally heard by the ITAT, the bench clerk should retain the files with him till the receipt of the order of the ITAT. The bench clerk will put up this order on the file for the perusal of the DR who argued the case. In case either the DR or the Assessing Officer decides to file a miscellaneous application, the file will continue to be retained by the bench clerk. He will link it with the miscellaneous application file. In other cases, the file will be transferred to the record room.

16. Miscellaneous applications

16.1 After the ITAT has passed its order, either the assessee, on a payment of fees of rupees fifty, or the Department can file a miscellaneous application if there is any mistake apparent from the record. The ITAT has powers u/s 254(2) to amend such orders with a view to rectifying a mistake apparent from the records. This is possible within four years of passing of the original order. However, if the amendment is likely to enhance the liability of the assessee, a reasonable opportunity of being heard has to be given to the assessee.

16.2 The ITAT is the final fact-finding authority. The High Court, on further appeal, will go into the questions of law only and will not consider the facts afresh. Hence it is important that all the facts are brought out in their proper perspective in the ITAT's order. If there is a mistake in the order with regard to the narration of facts, steps should be taken by means of filing a miscellaneous application to get such order amended.

16.3 The bench clerk should maintain a separate register for the miscellaneous applications. These applications should be linked with the appeal file and be put up for orders to the Sr. AR incharge of the bench. The format for the register is as under:-

| Sl. No | Name of the assessee | ITA/WT A/GTA/R A. | A.Y | Date of the order of the Tribunal | Date of hearing | Date of receipt of order u/ 254(2) | Date of approval |
|--------|----------------------|-------------------|-----|-----------------------------------|-----------------|------------------------------------|------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |

17. Stay applications

17.1 Many a time the assessee file stay applications before the Tribunal. Normally such applications are filed after their applications for stay are rejected by the Assessing Officer. It is observed that in a majority of cases, the assessee do not exhaust the remedies available from the departmental hierarchy. They approach the tribunal without seeking stay or grant of instalments from the Commissioner. The DR should, therefore, invariably consult the Commissioner in all matters relating to stay applications. In case sufficient time is not available, the DR should personally talk to the Commissioner and obtain oral instructions. The matter should also be discussed with the Assessing Officer, who can furnish a brief to support the following grounds on which the stay application can be argued:-

- there is no prima facie case on merits
- the balance of convenience is in favour of revenue which represents public interest
- no irreparable harm is caused to the appellant
- stay will result in unjust enrichment of the petitioner
- adequate security must be obtained where stay is granted

- vi. adequate compensation may be awarded if, on merits the petitioner fails but in the meantime, enjoys the benefit of stay
- vii. there should be early hearing of the case in which stay is granted and the applicant is not allowed to seek adjournments.
- viii. Stay lapses after 180 days.

18. Bunching of appeals on the same point

18.1 The judicial section in the Commissioner's office in collaboration with the Assessing Officers should identify the appeals which could be bunched and issue instructions to the DRs for moving the Tribunal for fixing them together. A number of appeals in which the same issue is involved may be pending before the Tribunal. If such appeals are bunched and heard together, there would be a considerable saving in time and effort. The criteria for such bunching could be:-

- i. same question of law involved
- ii. group assessments of different family members or sister concerns
- iii. involvement of large number of assessees showing credits from same hawala
- iv. all cases connected with a particular search and seizure operation
- v. the issue involved has been decided by the jurisdictional High Court or Supreme Court

19. Representation before special bench

19.1 In an appeal involving important controversial issues, the President of the Tribunal by an order sets up a special bench of three or more members. The importance of representation before the special bench cannot be overstated. The practice followed by all the benches is that wherever there is a decision of the special bench, they will follow the same. Even where there is a High Court decision in favour of the Department, the benches of the Tribunal situated outside the jurisdiction of that High Court, normally follow the special bench decision. In all such cases, the DR should take a stand that the decision of the High Court which is in favour of the Department should be followed. If necessary, the DR should apply to the President of the Tribunal for constitution of a larger special bench.

19.2 The order of the President setting up the special bench also spells out the issue involved. This order is publicly displayed on all the notice boards the Tribunal. Thus the DRs all over the country are well aware of the issues which are likely to come up for hearing before each special bench. It is quite likely that the appeals involving the same issue are also pending for disposal or have been disposed of in places other than the station in which the special bench is constituted. It is also likely that other DRs have already studied the issue. In such a case the concerned DR from outstation should send his comments on the specific issue to the Sr.AR of the station where it is coming up for hearing before the special bench. The Sr.AR in consultation with the Chief Commissioner shall nominate well in advance the team of DRs responsible for representation before the special bench. It would be desirable if this team is not allotted any other work for a week before the case comes up for hearing. This will give them adequate time to prepare the appeal and, if necessary, consult other senior colleagues on the matter. If any DR stationed elsewhere considers that his assistance will be valuable, he should prepare a brief set of arguments and forward the same to the Sr.AR concerned. He may, after obtaining the approval of his Chief Commissioner, also come on tour and assist the DRs incharge of representation.

20. Engaging special counsel

20.1 Sometimes the issue before the special bench can be very complex and may have widespread repercussions involving large revenue. If the Sr.AR, after consulting his colleagues, feels that the interest of the Department will be better served if a senior counsel is engaged, he should take up the matter in advance with his Chief Commissioner so that the counsel is engaged well before the date of hearing. In all special bench matters, the Chief Commissioner should make available the services of the Assessing Officer who actually framed the order of assessment.

20.2 The process of engaging special counsel is time-consuming because the approval of the Finance Minister and the Law Minister has to be taken. It may therefore be advisable to avail the services of Senior Standing Counsel / Standing Counsel in such cases. The Standing Counsel can be engaged to represent cases before the Tribunal on the terms and conditions prescribed in the Board's Instruction Nos. 1806 dated 3-2-1989 and 1828 dated 13-9-1989.

21. Requisitioning departmental records

21.1 Non-availability of assessment records inhibits Departmental representation. DRs have often complained that they do not often get assessment records in time. The Assessing Officers may sometimes have genuine difficulty in sending the records on the specified date. In such cases, they must state the actual reasons so that the DR may obtain adjournment well in advance. However, it is experienced that the Tribunal is wary of granting adjournment merely for the reason that the DR has not been able to procure the records. The Assessing Officers should therefore, ensure that the records reach the DR well in time.

21.2 The DR should also process his own files well in advance and see whether the calling of records is really necessary. In many small appeals where the issues are clearly covered by earlier decisions which the Tribunal has been consistently following, there may not be any need to call for the records. Reduction in the volume of traffic of files ensures the procurement of files in cases where they are necessary. If it is decided to call for them, the requisition slips should be sent within three days of the receipt of the notice of hearing.

21.3 The assessment records must always be called for in appeals involving large revenue, especially where the issues are factual in nature. They would also be required in major appeals arising from search assessments or otherwise emanating from central or investigation circles. In all such cases, the DR should prepare the case with reference to the assessment records. Confidential records, if necessary, should be sent separately to the DR. These should not be produced before the Tribunal.

21.4 Sometimes, the Assessing Officer who passed the assessment order may not be the Assessing Officer who files an appeal. Subsequent to the filing of the appeal, the jurisdiction over the case may be transferred to another officer. In all such cases, as soon as the assessment records are transferred to another officer, an intimation to this effect should be sent by the officer transferring the records to the Registrar of the Tribunal as well as the DR. Such intimation should indicate the appeal number and date of filing of the appeal. This will enable the DR to requisition the records from the officer presently holding the jurisdiction. Such intimations must be placed by the bench clerk in the concerned appeal folder.

21.5 The registers for requisition of records and their movement are to be maintained in the following format:-

Register of cases in which requisition for case records sent

Name of the Bench _____

Date _____

| Sl. No. | Name of the assessee | A.Y to which the appeal relates | Date of hearing fixed by ITAT | Date by which the Asstt. Records should reach AR's office (as mentioned in the requisition slip. | Date of receipt of records in the AR's office | Remarks |
|---------|----------------------|---------------------------------|-------------------------------|--|---|---------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |

Record movement register

| Sl. No. | Name of the assessee | Bench to which relates | IT Circle/ Ward | No. of volumes received | Date of return | No. of volumes returned |
|---------|----------------------|------------------------|-----------------|-------------------------|----------------|-------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |

22. Record room

22.1 In multi-bench stations, there should be a central record room, manned by a record clerk. The records clerk will store the files received in the record room in separate racks bench-wise and year-wise. On receipt of files in the record room from the bench clerk, the record clerk will make entries in the file register, to be maintained bench-wise and year-wise. He will keep these files in the racks meant for a particular bench in the serial order of the files. The format of the file register is as follows:-

| Sl. No | File No. | Appeal No. | Parties to the dispute | Date of last hearing | Movement | Date of destruction |
|--------|----------|------------|------------------------|----------------------|----------|---------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |

22.2 When the DR or the bench clerk requisitions any file, the record clerk will make the same available to him after noting down its movement in the file register. In single and two bench stations, the respective bench clerks will maintain the files in separate racks provided for this purpose. The assessment and other records received from the field offices will be received and kept in the custody of the concerned bench clerk in closed almirahs.

23. Orders of the ITAT

23.1 The receipt clerk will put up the orders of the Tribunal to the respective DRs. In case the DR finds an order which lays down important principles or precedents, he may pass on a copy of the same to the Judicial Section for circulation among the other DRs and field officers.

23.2 The orders received from the Tribunal are to be arranged date-wise and bench-wise. The orders in income-tax appeals should be properly bound quarterly. The orders in other direct taxes should be bound on a half-yearly basis. At the beginning of each volume, an index in the following format should be prepared.

Name of the Bench:_____

| Sl.No. | Date of order | IT/WT/GT Appeal No. | Parties to the dispute | Remarks |
|--------|---------------|---------------------|------------------------|---------|
| 1 | 2 | 3 | 4 | 5 |

23.3 The bound volumes of the orders of the ITAT shall be kept, properly arranged in serial order in closed almirahs so as to be made available to the DRs when required by them for reference.

PART C : APPEALS TO HIGH COURT

1. The provisions relating to appeals to the High Court are dealt with in sections 260A and 260B. An appeal can be filed by the Chief Commissioner or Commissioner or an assessee aggrieved by the Appellate Tribunal's order. An appeal lies to the High Court against the order of the Appellate Tribunal if the High Court is satisfied that the case involves a substantial question of law. The time limitation prescribed for such an appeal is 120 days from the date of receipt of the order.

2. Monetary limits for filing appeals

2.1 By Instruction No. 1979 dated 27-3-2000, the Board has revised the monetary limits of the tax effect ordinarily required in a case for filing an appeal to the High Court. Now, such tax effect has to be more than Rs. 2 lakhs. This new monetary limit would apply to each case taken individually. That is, in a group of cases, each case should satisfy this monetary limit independently. The cumulative revenue effect is not to be taken into consideration. However, the monetary limit would not be applicable in the following cases:-

- i. where a revenue audit objection in the case has been accepted by the Department
- ii. where the Board's order, notification, instruction or circular is the subject matter of an adverse order
- iii. where prosecution proceedings are contemplated against the assessee
- iv. where the constitutional validity of the provision of the Act are under challenge

3. Powers of the High Court

3.1 Where the High Court is satisfied that a substantial question of law is involved, it will formulate the same. It then, after hearing the case decide the question of law so formulated and deliver its judgment giving reasons. In addition, the High Court may determine any issue, which has not been determined by the Appellate Tribunal or an issue which has been wrongly determined. The High Court can also award costs, as it deems fit.

3.2 All appeals filed u/s 260A should be heard by a bench of not less than two members of the High Court. The relevant provisions of the Code of Civil Procedure relating to appeals

to the High Court would be applicable mutatis mutandis to all appeals filed under section 260A.

4. Substantial question of law

4.1 Although the expression “substantial question of law” has not been defined anywhere in the statute, the Supreme Court in *Sir Chunilal V. Mehta and Sons v. Century Spinning and Manufacturing Co. Ltd.*, AIR 1962 SC 1314, has laid down the following tests to determine whether a substantial question of law is involved:-

- v. whether it directly or indirectly affects the substantial rights of the parties
- vi. whether it is of general public importance
- vii. whether the issue has not yet been settled by the Supreme Court
- viii. whether it is not free from difficulty
- ix. whether it calls for a discussion on alternative views

5. Functions of the High Court cell

5.1 By Instruction No. 1957 dated 22-01-1998, the Board has created a High Court Cell in each Chief Commissionerate directly under the administrative control of the Chief Commissioner of Income-tax to provide for co-ordinated action in filing appeals to the High Court. The cell would be headed by an Addl. Commissioner / Joint Commissioner. The mechanism and modalities of the functioning of this Cell is to be decided by the respective Chief Commissioners taking into account the requirements of their region. The High Court cell will be responsible for: -

- i. the timely processing and filing of appeals to the High Court
- ii. processing of applications for appointment of Standing Counsels
- iii. (the procedure for appointment of Standing Counsels has been laid down in Board's Instruction No.1806 dated 3-2-1989 as amended by Instruction No. 1828 dated 13-9-1989)
- iv. co-ordination between the Assessing Officers and the Standing Counsels
- v. liaison with the Judicial Section in the Board
- vi. processing of cases for filing SLP to the Supreme Court.

6. Guidelines for typing and preparation of application u/s 260A

- i. Typing should be in double space throughout on green full-scape paper. One and a half space may be used, but single space typing is forbidden.
- ii. Photocopies of documents should not be attached as exhibits.
- iii. A margin of two inches on the left and right side of the paper and at least one inch on the top and bottom of paper should be left.
- iv. The pleadings to be filed in the High Court are stitched on the left side – proper space should be left for stitching, so that the typed matter should not get hidden inside the stitches.
- v. All the blanks regarding dates, names etc. should be filled in after minutely checking up the matter. No blanks should be left.
- vi. The signing officer should write at the end of each Exhibit – “True Copy” and put his signature and name below it.
- vii. In all the exhibits, on the first page, the exhibit number should be written in good handwriting on the top right hand corner.

viii. In the body of the petition when an exhibit is first introduced, a clarification must follow as to what it is – e.g. “.....hereto annexed and marked as ‘Exhibit – A’ being a copy of the order of the Assessing Officer...”. Therefore, the words “Exhibit – A” should be written on the left hand margin. At the end of each exhibit, the date of passing of the order (of the relevant exhibit) should be written.

ix. The signing officer should sign both sets of green papers which are meant for judges.

x. Court fees stamps should be affixed on the right top corner and not in the margin

xi. Any cuts or erasures on the application should be initialed by the Signing Officer in the presence of the Court Officer while filing the appeal.

xii. Each and every section of the application should be duly flagged.

7. List of precautions to be taken to avoid objections being raised in filing the appeals

7.1 Dates:-

i. The dates should be written correctly and no blanks should be left.

ii. The dates of assessment and appellate orders should be mentioned, and not the date of its receipt in the CIT’s office.

iii. The date of order should be mentioned on the concerned exhibits.

iv. The dates of orders in the index, in averment of appeal and in exhibits should not mismatch.

7.2 Exhibits:-

v. All exhibits should be marked in the margin on the left side in the Memo of Appeal, whenever an exhibit is introduced.

vi. All exhibits should be marked separately in the index along with dates.

vii. The exhibits should be clear and legible copies

viii. Certified true copies of exhibits should bear the signature of the person making the averment of the correctness of the appeal filed

7.3 Time-barred appeals:-

ix. If appeals are time barred by limitation, a notice of motion for condonation of delay along with the affidavit explaining the delay should be attached

x. In cases of extraordinary delay, a detailed affidavit explaining every day of delay should be attached

7.4 Appeal title:-

xi. The ITA number, that is, the appeal number given by the Appellate Tribunal, should be correctly mentioned in appeal title in the memo of appeal

xii. The relevant sub-section of section 260A should be mentioned in the title

7.5 Numbering of pages:-

xiii. The pages should be correctly numbered and no blanks should be left either in the pages or in the index

xiv. All pages should be initialed

7.6 Note of appearance:-

The note of appearance must be dated by the Advocate on Record (the lawyer who files the Vakalatnama)

7.7 Flagging of relevant papers:-

- xv. The proforma, synopsis, prayers, impugned orders and exhibits should be duly flagged
- xvi. The prayer clause must be flagged

7.8 Other details:-

- xvii. The synopsis should be complete and should contain the list of authorities to be relied upon
- xviii. Details of disputed claim must be given in rupees
- xix. Valuation clause for Court fee payment to be written
- xx. Denomination of Court fee stamps to be given
- xxi. Confirmation of Court fee payment should be made
- xxii. The original sets should be carefully prepared and no part of duplicate sets should come into or be made a part of original sets
- xxiii. The paras in the appeal memo must be correctly numbered

PART D : APPEALS TO THE SUPREME COURT

1. Section 261 provides an appeal to the Supreme Court from any judgment of the High Court on a reference made u/s 256 (before 1-10-1998) or an appeal made u/s 260A. On behalf of the Department, it is the Board that can file the appeal to the Supreme Court. This appeal would lie only when the High Court certifies that the case is a fit one for appeal u/s 261. The monetary limit prescribed by the Board for filing an appeal to the Supreme Court is a tax effect exceeding Rs.5 lakhs.

2. Certificate for appeal

2.1 The Certificate for appeal to the Supreme Court can be granted by the High Court suo motu or on an application by a party. Such an application is to be made within 90 days from the date of the pronouncement of the judgment of the High Court (and not from the date of receipt of the copy thereof). The application for the certificate must state the reasons why the case is sought to be certified as a fit one for an appeal to the Supreme Court. The application should also state the grounds of appeal which the party proposes to take before the Supreme Court.

2.2 The High Court may refuse to grant a certificate. In that event, the aggrieved party may make an application within 60 days to the Supreme Court under Article 136 of the Constitution. A special leave petition can also be made directly to the Supreme Court within 90 days from the date of the High Court's judgment. The limitation starts from the date of pronouncement of the judgment, but if an application for a certified copy is made immediately, it is possible to contend that the time taken for obtaining the copy should be excluded.

3. Procedure for proposals for an appeal to the Supreme Court

3.1 The Department's Standing Counsel should be present in the High Court when the judgment in any case is pronounced. He should immediately report to the CIT the result of the judgment. The CIT should then consider whether the question referred would be of any importance in the assessment of other assesseees or otherwise involves an issue of wider ramifications. The CIT should also consider the revenue effect of the High Court judgment. Having regard to these factors, he should decide whether an appeal to the Supreme Court is necessary or desirable. The Standing Counsel should be asked to apply for a copy of the judgment. When the copy is received, the Standing Counsel's opinion as to the chances of success before the Supreme Court should be obtained. When the Standing Counsel's opinion is received, the CIT should formulate his proposals for an appeal to the Supreme Court and send them to the CCIT. If the CCIT recommends the filing of the SLP, he forwards the matter along with his comments for further processing. The judicial section/High Court cell of the CCIT's region will co-ordinate for this purpose.

3.2 If a copy of the judgment is received in the Board's office without any specific suggestion for an appeal, it will be presumed that in the opinion of the CCIT/CIT no appeal to the Supreme Court is called for in that case. The responsibility for suggesting an appeal to the Supreme Court rests primarily with the CCIT/CIT concerned.

4. Circulation of orders

4.1 To avoid the presumption that an adverse decision of a High Court has been accepted by the Department, all CITs, Departmental Representatives and the ITAT should be informed about whether or not an appeal is filed in the Supreme Court against such a decision. The CIT concerned should therefore circulate to all the other CITs and Departmental Representatives a gist of all High Court decisions with which they may be concerned. While reporting an adverse decision of a High Court, he should also indicate whether or not an appeal to the Supreme Court is being filed.

5. Contingencies arising during the pendency of appeals

5.1 Certain contingencies may arise during the pendency of appeals. These require the bringing on record the names and addresses of the relevant persons. These contingencies are tabulated below:-

| Sl.No | Contingency arising during the pendency of appeal | Names and addresses of persons to be brought on record |
|-------|---|--|
| 1 | In the case of a company, it may go into liquidation or be wound up | Liquidator of the company |
| 2 | In the case of a firm, AOP or BOI, there may be dissolution | Erstwhile partners of the firm or members of the AOP or BOI |
| 3 | In the case of an HUF, there may be complete partition amongst the members | Erstwhile members of the family and the Karta |
| 4 | In the case of an individual, there may be detrimental illness or insolvency etc. | Legal heirs or representatives or executors of his will or administrators of his estateY |

| | | |
|---|---|--------------|
| 5 | In the case of a trust, the trustees may change | New trustees |
|---|---|--------------|

5.2 The Department must bring on record the names of relevant persons as early as possible. It is also possible that during the pendency of the appeals, the addresses of the parties may change and case-papers are transferred or jurisdiction of CIT is changed. It is necessary to bring all these facts to the notice of the judicial section. In case files are discontinued on closer of business, they should be kept separately as pending appeals. They may be made available to the judicial section at the time of hearing as it is likely that the appeals may be heard after the lapse of time.

PART E : REVISION BY THE COMMISSIONER OF INCOME-TAX

1. Section 263 empowers the CIT to revise such orders as are prejudicial to the revenue. Section 264 deals with the power of the CIT to revise other orders.

2. Revision of orders prejudicial to revenue (section 263)

2.1 The provisions under section 263 can be invoked by the CIT if the order passed by the Assessing Officer is erroneous, insofar as it is prejudicial to the interests of revenue. The erroneous order could be as a result of the Assessing Officer having misapplied the law, drawing a wrong inference from a set of facts, or failing to enquire into a material issue.

The basic requirements for invoking the power under section 263 are as under:-

- i. The existence of an order of the subordinate authority, i.e. the Assessing Officer. The term 'Assessing Officer' includes a Addl./Joint Commissioner who is authorised to perform the functions of an Assessing Officer
- ii. The order should be erroneous in so far as it is prejudicial to the interest of revenue

2.2 These powers can be exercised by the CIT either suo motu or on a proposal being made by the Assessing Officer. The Assessing Officer may forward a proposal in the following circumstances:-

The erroneous order may come to light:-

- i. during the course of other proceedings
- ii. as a result of an audit objection
- iii. through Inspection Report by a higher authorities

2.3 The initiative for bringing such cases to the notice of the Commissioner lies primarily with the Assessing Officer. The proposal u/s 263 should be forwarded by the Assessing Officer through the Joint / Additional Commissioner to the CIT in the format given below:

Format for Proposal under section 263

- i. Serial number
- ii. Name of the assessee
- iii. Complete postal address
- iv. Permanent Account Number
- v. Assessment year
- vi. Income returned
- vii. Income assessed

- viii. Date of assessment
- ix. Section under which assessment order passed
- x. Last date on which the time limit for passing order u/s 263 expires
- xi. Reasons for the difference between returned and assessed income (give details of additions made)
- xii. Details of the audit objection or error in order
- xiii. Likely tax effect
- xiv. Whether appeal filed against the assessment order, and if so result of the appeal
- xv. If the assessee's appeal is allowed, whether the decision has been accepted by the Department
- xvi. Whether the appeal is accepted for low tax effect or on principle
- xvii. Whether the issue involved in the present proposal has been dealt in earlier assessment years

2.4 On receipt of the proposal from the Assessing Officer, the Commissioner, after making any necessary enquiries, will issue a notice to the assessee, clearly indicating the reasons for the proposed modification of the order. At this stage, if an appeal for an earlier year is pending before the CIT(A), in which the same issue is involved, then the Commissioner should request the CIT(A) to keep the appeal pending till the order u/s 263 is passed. Similarly, if the proposal for the revision is on account of non-initiation of penalties, and the quantum appeal is pending before the appellate authorities, the appellate authorities can be requested to take up and decide the appeal out of turn so that the order u/s 263 can be passed depending upon the confirmation of the additions. However, it is to be mentioned here that the decisions of the various High Courts are divided on the issue whether the Commissioner can invoke the power u/s 263 in cases of failure to initiate penalties.

2.5 In response to the notice u/s 263, the assessee can either appear in person or through an authorised representative, or file his written submissions in lieu of personal appearance. After considering the contentions put forth by the assessee and after examination of the records, the Commissioner will pass appropriate orders. If he is of the opinion that the concerned order is erroneous and prejudicial to the interests of the revenue, he can pass an order enhancing or modifying the assessment order. The Commissioner also has powers to cancel the assessment and direct a fresh assessment to be made. If however, the Commissioner reaches the conclusion that the order is not erroneous, he drops the proceedings altogether.

2.6 The records that can be examined by the Commissioner are the records as they exist at the time when the order u/s 263 is to be passed. His examination is not restricted to the records available at the time of passing of the assessment order. For example, the Commissioner would be justified in invoking his powers u/s 263 on the basis of the valuation report received from the Valuation Officer after the assessment order is passed.

2.7 In case an appeal has been filed by the assessee, powers of the Commissioner will extend beyond matters that have been considered or decided in appeal.

2.8 In cases of objections raised by the Revenue Audit parties which are likely to be converted into draft paras, the Commissioner in his order u/s 263, has to establish that the order of assessment is erroneous and prejudicial to the interest of revenue.

2.9 The time limit for passing the order u/s 263 is two years from the end of the financial year in which the order sought to be revised has been passed. In computing this time limit, the time taken in giving an opportunity of rehearing under the provisions of section 129, consequent to a change of incumbent in office, or the period during which a stay is operative, is to be excluded. This time limit would not be applicable in the case of orders passed in consequence of, or to give effect to any finding or direction contained in an order of the Appellate Tribunal, High Court or the Supreme Court.

2.10 The appeal against an order of the Commissioner u/s 263 lies with the ITAT.

3. Revision of other orders by the Commissioner of Income-tax (Section 264)

3.1 The provisions of section 264 provide for the revision of an order passed by the Assessing Officer which is prejudicial to the assessee. These powers can be invoked by the Commissioner suo motu or on a petition being filed by the assessee.

3.2 The assessee can make the petition u/s 264 within one year from the date on which the order in question is communicated to the assessee or the date on which he otherwise comes to know of it, whichever is earlier. A petition made after the expiry of this period of one year can be entertained if the Commissioner is satisfied that the assessee had reasonable cause for the delay. In such cases, the revision petition of the assessee should be accompanied by a petition seeking condonation of delay.

3.3 When the Commissioner exercises his powers u/s 264 suo motu, he should pass his revision order within a year of the date of the order sought to be revised. If the powers are being exercised on a petition being made by the assessee, then the order u/s 264 should be passed within one year from the end of the financial year in which such petition is made by the assessee.

3.4 The assessee's petition should be in duplicate. It should be accompanied by a copy of the order sought to be revised. The fees for filing the revision petition is Rs. 500 and proof for the payment of this fee should be enclosed along with the petition. The fees can be paid in any of the authorised banks after obtaining a challan for this purpose from the Assessing Officer.

3.5 The order u/s 264 cannot be passed by the Commissioner if the time allowed for filing an appeal to the CIT(A) or the ITAT has not elapsed. However if the assessee waives his right of appeal in such cases, the revision petition can be entertained. In cases where the assessee has already filed an appeal, the revision petition can be entertained only if the assessee withdraws his appeal. It is to be added that if the CIT(A) does not decide the appeal on merits, but dismisses the appeal as being belated, then the Assessing Officer's order does not merge with the order of the CIT(A), and the Commissioner will have the jurisdiction to entertain the revision petition u/s 264.

3.6 In cases where the order of the Assessing Officer which is sought to be revised has been made the subject of an appeal to the ITAT by the assessee, the Commissioner cannot exercise his powers u/s 264, even if the relief claimed in the revision petition is different from the relief claimed in the appeal. However, if a departmental appeal is pending before the ITAT, there is no bar for the Commissioner to entertain the revision petition.

3.7 After receiving the revision petition the Commissioner can call for a report from the Assessing Officer. The report of the Assessing Officer should inter alia discuss the issues involved and comment on each and every contention raised by the assessee, giving reasons as to whether the relief claimed is allowable or not. The report should state whether a similar issue was involved in any earlier year and how it was dealt with. The co-operation of the assessee in the assessment proceedings as well as payment of taxes for the three earlier assessment years should be commented upon so as to enable the Commissioner to decide whether the assessee is a habitual defaulter or not.

3.8 On receipt of the Assessing Officer's report, if the Commissioner is of the opinion that the relief claimed by the assessee is clearly allowable, he may pass appropriate orders granting the same. Otherwise, if he considers that it cannot be allowed or that it can be only partly allowed, the assessee is to be given an opportunity and the case posted for hearing. After hearing the assessee and considering his written submissions if any, the Commissioner should pass an appropriate speaking order dealing with all the contentions of the assessee and his own reasons for allowing the reliefs granting by him or rejecting the assessee's petition. Under this provision, the Commissioner cannot pass an order enhancing the tax liability of the assessee.

3.9 Fresh claims, not made before the Assessing Officer, can be made for the first time in a revision petition u/s 264. However, according to the Board's Instruction No.1096 dated 14-09-1977, belated claims of refund cannot be entertained by the Commissioner under this section.

Citizens' Charter

A DECLARATION OF OUR COMMITMENT TO EXCELLENCE IN OUR SERVICE TO TAXPAYERS

We Seek

TO BE FAIR

- By being impartial and objective.
- By collecting taxes as per the law.

TO BE HELPFUL

- By being courteous and efficient.
- By displaying names, designations, telephone numbers and locations of the officials dealing directly with the public.
- By informing tax payers as to their rights, duties, entitlements and obligations under the law.
- By providing information, leaflets, forms, etc. at the Information & Facilitation Counters.
- By providing information regarding procedures and authorities for legal remedies.

TO BE EFFICIENT

- By setting tax matters promptly and correctly.
- By handling personal and business information/materials furnished to the Department confidentially and as permitted by the law.
- By acknowledging all communications from tax payers on the spot and in any case within 7 days and furnishing final replies within 30 days.
- By redressing all complaints and grievances within 30 days.
- By issuing Income Tax Clearance Certificate u/s 230 of Income Tax Act within 7 working days and that u/s 230A of Income Tax Act within 30 days.
- By disposing of all rectification applications u/s 154 of Income Tax Act within 30 days.
- By giving effect to appellate orders within 30 days of the receipt of such orders.
- By issuing refunds within 30 days of determination.

WE EXPECT YOU

- To be prompt, honest and accurate.
- To pay taxes in time.
- To quote Permanent Account Number (PAN)/GIR Number in all your returns and correspondence.