

## **What are the ways available to the aggrieved taxpayer where the Assessing Officer has finalized the ex parte assessment u/s 144**

Where the Income Tax Authority sent a notice to the taxpayer asking for the requisite details but the taxpayer is silent and/or not forthcoming with the requisite details within time allowed. Accordingly, the Assessing Officer (AO) is of opinion that he has no option left but to finalize the proceedings **ex parte** under the provisions of section 144 of the Act and the AO finalised the tax assessment on the ground that the taxpayer failed to comply with the various notices issued by the Assessing Officer and the overall attitude of the assessee was not co-operative.

But ***there may be some genuine reason for taxpayer*** for remaining silent or has not come forward with the necessary details within time (*for example, Income tax officials send notice to taxpayer to the address available in their records but the taxpayer has changed his address from there. And the taxpayer does not even know that the income tax notice has been sent by income tax authorities etc*). And the taxpayer is aggrieved with the assessment done by the Assessing Officer. **For the sake of natural justice, the taxpayer can appeal before the appellate authority.**

The first appellate authority is the **CIT (Appeals)**. The taxpayer can appeal before the CIT(A) by filing Form 35 within 30 days of receipt of the order of the Assessing Officer. Where the CIT(A) also gives a decision against the taxpayer, in such a case the taxpayer can further appeal to second appellate authority of Income Tax. The second appellate authority is the **Income Tax Appellate Tribunal (ITAT)**. The taxpayer can file an appeal before the ITAT by filing Form 36 within a period of 60 days from the date of receipt of the order of the CIT(A).

**In connection with the above, the following is submitted that fully support to the assessee/Taxpayer: -**

**1. ITAT Mumbai Bench** on finding that the order passed by the Commissioner is an ex-parte order which resulted into denial of proper opportunity of being heard, the Mumbai ITAT set aside the order passed u/s 144 of the Income Tax Act, and remanded the case back to the file of the Commissioner for decision afresh.

**2. ITAT Kolkata bench** quashed an ex-parte Assessment framed under section 144 of the Income Tax Act, 1961, and the order passed by the first appellate authority on the ground that no notice for hearing was served to the assessee before passing the assessment.

**3. ITAT Pune Bench in case of Mr. Pravin Pandurang Patil V. Jt. Commissioner of Income-tax [ITA NO 850/PN/08]**

the Hon'ble ITAT held that non-satisfaction with the answer to the queries raised cannot enable the Assessing Officer to invoke clauses (b) and (c) of section 144(1) of the Act.

**4.** Effective opportunity of being heard shall be allowed to the assessee before taking decision in accordance with law. " Shri Sharvan Beniwal, Bikaner vs. ITO, Ward-1(4), Bikaner [2009] 12 ITCD 229 (ITAT-Jd)

**5.** For the assessment u/s 144, the issuance of statutory notice u/s 143(2) is mandatory requirement and, therefore, assessment made u/s 144 without issuing statutory notice u/s 143(2), is null and void and liable to be quashed – Pravin Balubhai Zala vs. ITO [2010] 129 TTJ 373 (MUMBAI)

## **Further, some situations where the PRINCIPLE OF NATURAL JUSTICE may prove helpful to the taxpayer are as follows: -**

The principles of natural justice have come to be known as being part of the guarantee contained in Article 14 of our Constitution i.e. "The concept of equality". Violating the rule of natural justice results to arbitrariness and hence results to discrimination. Therefore, any violation of the principle of natural justice by anyone is a violation of Article 14. It is well settled proposition of Income Tax Law that any Order passed in contravention of principles of natural justice is a null and void

## **Situations of violation of principles of natural justice in taxation laws: -**

- 1.** When notice itself is not served. or
- 2.** When cross-examination is denied. Or
- 3.** When reasonable time for reply or for adjournment is denied without notice. Or
- 4.** When the order is passed for new additional demand without issuing revised notice. Or
- 5.** When the written submission for the Notice or for Personal Hearing is not considered. Or
- 6.** When relied upon documents or copies of seized documents are not provided by the department despite request letter submitted by the assessee. Etc.

**Conclusion:** - Generally, the Court have a view that no assessee or litigant should get a feeling that he never got an opportunity or was deprived of an opportunity to clarify the doubts of the assessing officer/decision maker. After all confidence and faith of the public in the justness of the decision-making process which has serious civil consequences is very important and that too in an authority/forum that is the first point of contact between the assessee and the Income-tax Department.