

**Reference to Commissioner in certain cases.**

**144BA. [\*\*\*]**

**The following section 144BA shall be inserted after section 144B by the Finance Act, 2013, w.e.f. 1-4-2016 :**

**Reference to [Principal Commissioner or]<sup>1</sup> Commissioner in certain cases.**

**144BA. (1)** *If, the Assessing Officer, at any stage of the assessment or reassessment proceedings before him having regard to the material and evidence available, considers that it is necessary to declare an arrangement as an impermissible avoidance arrangement and to determine the consequence of such an arrangement within the meaning of Chapter X-A, then, he may make a reference to the [Principal Commissioner or]<sup>2</sup> Commissioner in this regard.*

*(2) The [Principal Commissioner or]<sup>3</sup> Commissioner shall, on receipt of a reference under sub-section (1), if he is of the opinion that the provisions of Chapter X-A are required to be invoked, issue a notice to the assessee, setting out the reasons and basis of such opinion, for submitting objections, if any, and providing an opportunity of being heard to the assessee within such period, not exceeding sixty days, as may be specified in the notice.*

*(3) If the assessee does not furnish any objection to the notice within the time specified in the notice issued under sub-section (2), the <sup>4</sup>[Principal Commissioner or] Commissioner shall issue such directions as he deems fit in respect of declaration of the arrangement to be an impermissible avoidance arrangement.*

*(4) In case the assessee objects to the proposed action, and the <sup>5</sup>[Principal Commissioner or] Commissioner after hearing the assessee in the matter is not satisfied by the explanation of the assessee, then, he shall make a reference in the matter to the Approving Panel for the purpose of declaration of the arrangement as an impermissible avoidance arrangement.*

*(5) If the <sup>6</sup>[Principal Commissioner or] Commissioner is satisfied, after having heard the assessee that the provisions of Chapter X-A are not to be invoked, he shall by an order in writing, communicate the same to the Assessing Officer with a copy to the assessee.*

*(6) The Approving Panel, on receipt of a reference from the <sup>7</sup>[Principal Commissioner or] Commissioner under sub-section (4), shall issue such directions, as it deems fit, in respect of the declaration of the arrangement as an impermissible avoidance arrangement in accordance with the provisions of Chapter X-A including specifying of the previous year or years to which such declaration of an arrangement as an impermissible avoidance arrangement shall apply.*

*(7) No direction under sub-section (6) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interests of the revenue, as the case may be.*

*(8) The Approving Panel may, before issuing any direction under sub-section (6),—*

*(i) if it is of the opinion that any further inquiry in the matter is necessary, direct the <sup>8</sup>[Principal Commissioner or] Commissioner to make such inquiry or cause the*

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<sup>1</sup> Substituted w.e.f June 1<sup>st</sup>, 2013

<sup>2</sup> Substituted w.e.f June 1<sup>st</sup>, 2013

<sup>3</sup> Substituted w.e.f June 1<sup>st</sup>, 2013

<sup>4</sup> Substituted w.e.f June 1<sup>st</sup>, 2013

<sup>5</sup> Substituted w.e.f June 1<sup>st</sup>, 2013

<sup>6</sup> Substituted w.e.f June 1<sup>st</sup>, 2013

<sup>7</sup> Substituted w.e.f June 1<sup>st</sup>, 2013

<sup>8</sup> Substituted w.e.f June 1<sup>st</sup>, 2013

*inquiry to be made by any other income-tax authority and furnish a report containing the result of such inquiry to it; or*

(ii) *call for and examine such records relating to the matter as it deems fit; or*

(iii) *require the assessee to furnish such documents and evidence as it may direct.*

(9) *If the members of the Approving Panel differ in opinion on any point, such point shall be decided according to the opinion of the majority of the members.*

(10) *The Assessing Officer, on receipt of directions of the [Principal Commissioner or]<sup>9</sup> Commissioner under sub-section (3) or of the Approving Panel under sub-section (6), shall proceed to complete the proceedings referred to in sub-section (1) in accordance with such directions and the provisions of Chapter X-A.*

(11) *If any direction issued under sub-section (6) specifies that declaration of the arrangement as impermissible avoidance arrangement is applicable for any previous year other than the previous year to which the proceedings referred to in sub-section (1) pertains, then, the Assessing Officer while completing any assessment or reassessment proceedings of the assessment year relevant to such other previous year shall do so in accordance with such directions and the provisions of Chapter X-A and it shall not be necessary for him to seek fresh direction on the issue for the relevant assessment year.*

(12) *No order of assessment or reassessment shall be passed by the Assessing Officer without the prior approval of the [Principal Commissioner or]<sup>10</sup> Commissioner, if any tax consequences have been determined in the order under the provisions of Chapter X-A.*

(13) *The Approving Panel shall issue directions under sub-section (6) within a period of six months from the end of the month in which the reference under sub-section (4) was received.*

(14) *The directions issued by the Approving Panel under sub-section (6) shall be binding on—*

(i) *the assessee; and*

(ii) *the [Principal Commissioner or]<sup>11</sup> Commissioner and the income-tax authorities subordinate to him,*

*and notwithstanding anything contained in any other provision of the Act, no appeal under the Act shall lie against such directions.*

(15) *The Central Government shall, for the purposes of this section, constitute one or more Approving Panels as may be necessary and each panel shall consist of three members including a Chairperson.*

(16) *The Chairperson of the Approving Panel shall be a person who is or has been a judge of a High Court, and—*

(i) *one member shall be a member of Indian Revenue Service not below the rank of [Principal Chief Commissioner or]<sup>12</sup> Chief Commissioner of Income-tax; and*

(ii) *one member shall be an academic or scholar having special know-ledge of matters, such as direct taxes, business accounts and international trade practices.*

(17) *The term of the Approving Panel shall ordinarily be for one year and may be extended from time to time up to a period of three years.*

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<sup>9</sup> Substituted w.e.f June 1<sup>st</sup>, 2013

<sup>10</sup> Substituted w.e.f June 1<sup>st</sup>, 2013

<sup>11</sup> Substituted w.e.f June 1<sup>st</sup>, 2013

<sup>12</sup> Substituted w.e.f June 1<sup>st</sup>, 2013

(18) *The Chairperson and members of the Approving Panel shall meet, as and when required, to consider the references made to the panel and shall be paid such remuneration as may be prescribed.*

(19) *In addition to the powers conferred on the Approving Panel under this section, it shall have the powers which are vested in the Authority for Advance Rulings under section 245U.*

(20) *The Board shall provide to the Approving Panel such officials as may be necessary for the efficient exercise of powers and discharge of functions of the Approving Panel under the Act.*

(21) *The Board may make rules for the purposes of the constitution and efficient functioning of the Approving Panel and expeditious disposal of the references received under sub-section (4).*

*Explanation.—In computing the period referred to in sub-section (13), the following shall be excluded—*

- (i) the period commencing from the date on which the first direction is issued by the Approving Panel to the [Principal Commissioner or]<sup>13</sup> Commissioner for getting the inquiries conducted through the authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information so requested is last received by the Approving Panel or one year, whichever is less;*
- (ii) the period during which the proceeding of the Approving Panel is stayed by an order or injunction of any court:*

**Provided** *that where immediately after the exclusion of the aforesaid time or period, the period available to the Approving Panel for issue of directions is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of six months shall be deemed to have been extended accordingly.*

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<sup>13</sup> Substituted w.e.f June 1<sup>st</sup>, 2013