

Rules and e-Scheme for Dispute Resolution - Attributes & Nuances

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CBDT notifies [e-Dispute Resolution Scheme and Rules](#) pursuant to Section 245MA; The Rules provide that the Dispute Resolution Committee (DRC) shall be constituted for every region of Principal Chief Commissioner of Income-tax and shall consist of three members - two retired IRS officers who have held the post of CIT or any equivalent or higher post for five years or more and (ii) one serving officer not below the rank of PCIT or CIT as specified by the Board; The Scheme shall be available to any person satisfying conditions laid down in Explanation (a)(I) to Section 245MA and is not available for a person on whom proceedings under the Black Money Act for the relevant AY have been initiated; The Rules define 'specified order' against which application before the DRC can be filed which includes Draft Assessment Order under Section 144C, intimation pursuant to filing of various returns, TDS orders, among others; Also provides that no appeal before CIT(A) or objections before DRP can be preferred against the modified order passed pursuant to the decision of DRC on application against Draft Assessment Order; Further provides that DRC shall have power to waive penalty or grant immunity from the prosecution provisions of the Act on fulfilment of conditions specified in Rule 44DAC; The Scheme provides that DRC 'may' be decide the application within 6 months from the end of the month in which application for dispute resolution is admitted and modified order passed pursuant to DRC's decision is neither appealable nor revisable; The Scheme uses the word 'may' in the context of granting a personal hearing on VC by DRC when requested for by the Assessee.

Constitution of Dispute Resolution Committee - Rule 44DAA:

- The Central Government shall constitute a Dispute Resolution Committee (DRC) for every region of Principal Chief Commissioner of Income-tax for dispute resolution which shall consist of three members: (i) two retired IRS officers who have held the post of CIT or any equivalent or higher post for five years or more and (ii) one serving officer not below the rank of PCIT or CIT as specified by the Board.
- Members shall be appointed by Central Government for a period of three years and Cnetral Govt. may also fix a fee to be paid to member being retired IRS officer on a per case basis along with a sitting fee.
- The decision of the DRC shall be by majority

Scope: Dispute resolution shall be made on applications made in respect of dispute arising from any variation in the 'specified order' by such persons or class of persons, as may be specified by the Board.

Specified Order means

(i) Draft order under Section 144C

(ii) Intimation under Section 143(1), 200A(1) or 206CB(1)

(iii) Order of assessment or reassessment except an order passed in pursuance of directions of the Dispute Resolution Panel;

(iv) Rectification order under Section 154 having the effect of enhancing the assessment or reducing the loss;

(v) Order under section 201(1) or 206C(6A) and the following conditions are satisfied:

- a. Aggregate sum of variations proposed/ made does not exceed Rs. 10 lakh
- b. Total income as per return filed does not exceed Rs. 50 lakh
- c. Order is not based on search/ requisition initiated under Section 132/132A or survey under Section 133A or information received under DTAA

Specified Conditions in relation to a person who opts for dispute resolution under section 245MA, means a person in respect of whom:

- (i) Conditions mentioned in explanation (a)(I) to Section 245MA are satisfied
- (ii) Proceedings under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 have not been initiated for AY for which resolution is sought

Procedure:

Application (Rule 44DAB):

- An assessee fulfilling 'specified conditions' in respect of 'specified order' may file an application electronically in Form 34BC to the DRC designated for the region of Assessee's jurisdictional PCIT.
- The application shall be filed within one month from date of receipt of 'specified order' or where an appeal is pending before CIT(A), within such time from date of constitution of DRC as may be specified by CBDT.
- The application shall be submitted by email to the official email of the DRC along with proof of payment of tax on the returned income and fees of Rs. 1000 (Rule 44DAB(2))

Screening of application

- DRC shall examine the application with respect to specified conditions and criteria for specified order and issue notice calling upon Assessee to show cause as to why his application should not be rejected, specifying a date and time for filing a response. Assessee shall furnish a response to the show-cause notice within such specified time or as may be extended by DRC.
- Opportunity of being heard through video telephony or video conferencing facility, to the extent technologically feasible, may be granted to the Assessee on a specific request to the DRC.
- DRC may, after considering the response so furnished by the Assessee, reject the application or proceed to decide the application on merits in accordance with the procedure or in case where no response is furnished, reject the application.
- The decision of the DRC shall be communicated, either rejection or decision to proceed, to the Assessee on his registered e-mail address. The Assessee, within 30 days of receipt of such communication that the application is admitted, will be required to submit a proof of withdrawal of appeal or application to DRP, failing which DRC reject the application.

Procedure:

- DRC, upon admission of application and subsequent response of the Assessee confirming withdrawal of appeal/application to DRP, call for records from the income tax authorities and further examine, as it may deem fit, with respect to the issues covered in the application. DRC may also seek a report from the AO on the issues covered in the application or on any other issue arising during the course of proceedings.
- DRC may call for further information from the Assessee or any other person by sending an email to his registered email address before disposing off the application, against which the Assessee shall electronically submit its response within the time specified or as may be extended by DRC.
- An authorised representative appearing for the Assessee at the hearing shall electronically file, before the commencement of the hearing, a letter of authorisation. If such representative is relative of the Assessee, the document shall state the nature of his relationship with the Assessee, or if he is a person regularly employed by the Assessee the capacity in which he is at the time employed.
- DRC may after considering the material on record including any further information or evidence

received from the Assessee, income-tax authority or any other person, may decide:

(a) to make modifications to the variations in specified order, which are not prejudicial to the interest of the assessee, and decide for waiver of penalty and immunity from prosecution in accordance with the provisions of rule 44DAC, and pass an order of resolution accordingly

(b) to not make any modification to the specified order, and pass an order disposing off the application, which shall be treated as an order 'not prejudicial to the interest of the assessee, or

(c) for waiver of penalty and immunity from prosecution provisions in accordance with the provisions of rule 44DAC, without modifying the variations in specified order and pass an order of resolution accordingly, which shall be treated as an order not prejudicial to the interest of the assessee.

- Such orders shall be passed within 6 months from the end of the month in which application for dispute resolution is admitted. A copy of such order shall be served upon the Assessee and also the AO for giving effect to the same, if so required. AO shall serve a copy of the modified order along with notice of demand upon the assessee specifying a date for making payment of demand.
- If the Assessee is an eligible assessee under Section 144C, he shall not be eligible to file any reference to the DRP or an appeal to the CIT(A) against the modified order.
- The Assessee shall, furnish proof of payment of the said demand to the DRC and AO. DRC, upon receipt of the proof of payment shall, by an order in writing, grant immunity from prosecution and waiver of penalty if applicable, in accordance with the provisions of rule 44DAC.
- DRC may at any stage of the dispute resolution proceedings, if considered necessary, for reasons to be recorded in writing and after giving an opportunity of being heard to the assessee, decide to terminate the dispute resolution proceedings, if: (I) Assessee fails to cooperate during the course of proceedings, (II) Assessee fails to respond/ submit information in response to notice issued or (III) DRC is satisfied that the Assessee has concealed any particular material to the proceedings or had given false evidence or (iv) Assessee fails to pay the demand.
- Upon such termination, DRC shall intimate the income-tax authority for taking necessary action as per the provisions of the Act.
- Where the application is rejected, Assessee may file an appeal before the CIT(A) and the time taken by DRC in deciding on the admission shall be excluded from the period available to file such appeal.

Powers of DRC:

- DRC shall have power to waive penalty or grant immunity from the prosecution provisions of the Act on fulfilment of conditions specified in rule 44DAC.
- Proceedings before the DRC shall be deemed to be a judicial proceeding

Waiver of penalty imposable and Immunity from prosecution:

- DRC shall upon receipt of proof of payment of demand, grant to the person who made the application for dispute resolution under section 245MA waiver of penalty imposable or immunity from prosecution or both under the Act, in respect of the order which is the subject matter of resolution, if it is satisfied that such person has: (i) paid the tax due on the returned income in full if available; and (ii) co-operated with the Dispute Resolution Committee in the proceedings before it.
- No immunity shall be granted by DRC in a case where the proceedings for the prosecution for an offence have been initiated before the date of receipt of the application.
- Immunity granted to a person shall be withdrawn if such person fails to comply with any of the conditions subject to which the immunity was granted and thereupon the provisions of the Act shall apply as if such immunity or waiver had never been granted.

Appeal or Revision: No appeal or revision shall lie against the modified order.

Exchange of communication exclusively by electronic mode and Authentication of electronic record:

- All communications between DRC and the Assessee or authorised representative of the Assessee shall be exchanged exclusively by electronic mode, to the extent technologically feasible.
- all internal communications between the DRC, or any income-tax authority shall be exchanged exclusively by electronic mode.
- DRC, PCIT or CIT shall authenticate an electronic record by affixing their digital signature as the case may be.
- Assessee or any other person, by affixing his digital signature shall authenticate an electronic record, if he is required under the Rules to furnish his return of income under digital signature, and in any other case by communicating through his registered email address.

Delivery of electronic record:

- Every notice/order or any other electronic communication shall be delivered to the addressee, being the assessee or any other person, by way of:

(a) placing an authenticated copy thereof in the assessee's or any other person's registered account, or

(b) sending an authenticated copy thereof to the registered email address of the assessee or any other person, or his authorised representative.

- Such notice/order/communication shall be delivered to the addressee, being any other person, by sending an authenticated copy thereof to the registered email address of such person, followed by a real time alert.
- Response to notice/order/communication shall be furnished by the Assessee/any other person through his registered account, to the official email of the DRC. Once an acknowledgement is sent by the DRC, the response shall be deemed to be authenticated.
- The time and place of dispatch and receipt of electronic record shall be determined in accordance with the provisions of section 13 of the Information Technology Act, 2000

No Personal Appearance:

- A person shall not be required to appear either personally or through authorised representative in connection with any proceedings under this Scheme, apart from approval of DRC in response to specific request made by the Assessee.
- Where the request for personal hearing has been approved by the DRC, such hearing shall be conducted through video conferencing, including use of any telecommunication application software which supports video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board.
- The Board shall establish suitable facilities for video conferencing including telecommunication application software which supports video telephony at such locations as may be necessary, so as to ensure that the Assessee, or his authorised representative, or any other person is not denied the benefit of this Scheme merely on the ground that such Assessee or his authorised representative, or any other person does not have access to video conferencing at his end.

Proceedings not open to the Public: Proceedings before the DRC are not open to public and no person shall be present during such proceedings, without the permission of DRC, even on video conferencing or video telephony.

Power to specify format, mode, procedure and processes: PDGIT (Systems) or DGIT (Systems) shall in consultation with the jurisdictional PCCIT or PDGIT, in charge of DRC and with approval of CBDT, lay down the standards, procedures and processes for effective functioning of DRC in an automated and mechanised environment, including format, mode, procedure and processes in respect of the following, namely:

(i) service of the order or any other communication;

(ii) receipt of any information or documents from the person in response to the notice, order or any other communication;

- (iii) issue of official email-id to the Dispute Resolution Committee;
- (iv) issue of acknowledgment of the response furnished by the person;
- (v) provision of “e-proceedings” facility including login account facility, tracking status of dispute resolution proceedings, display of relevant details, and facility of download if so required;
- (vi) accessing, verification and authentication of information and response including documents submitted during the dispute resolution proceedings;
- (vii) receipt, storage and retrieval of information or documents in a centralised manner; and
- (viii) general administration and grievance redressal mechanism in the respective Dispute Resolution Committees.

Form 34BC: The form seeks:

- (i) Personal information of the Assessee: Name, PAN, Address, email address, mobile number,
- (ii) Details of order against which application is filed: AY, FY, Section under which order is passed, date of order and date of service of order and Income tax authority passing the order
- (iii) Application Details: Income Assessed, total additions/ disallowance of loss, Amount of additions/ disallowance disputed, amount of disputed demand
- (iv) Details of pending applications before DRC
- (v) Statement of facts, Grounds of application and additional evidence
- (vi) Application filing details i.e. fees paid