

## 2. INCOME TAX AUTHORITIES

### Sec 124(5) - Special Orders

Every AO shall have all the powers in respect of all income accruing / arising / received within his jurisdiction.

### Sec.124(2) Dispute regarding jurisdiction:

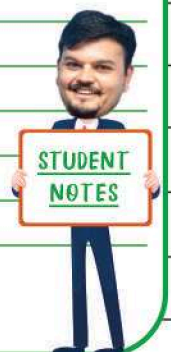
Any question relating to Jurisdiction shall be determined by DGIT/CCIT/CIT. If both the AO have different DGIT/CCIT/CIT then it shall be decided mutually. If both the authorities are not in agreement matter shall be decided by CBDT.

### Sec.124[3] Right of Assessee to challenge jurisdiction where

Return filed	Within 1m from date of service of notice u/s 142(1) /143(2)/ before completion of Assessment, Whichever is earlier.
Return not filed	after the expiry of time limit allowed by notice u/s 142(1) or Sec.148 for filling the ROI or within the time allowed in SCN issued seeking as to why a BJA u/s 144, Whichever is earlier
Search is done u/s 132	Within 1m of service of notice u/s 153A/153C(2) or before completion of Assessment whichever is earlier

### **Sec.127 Transfer of cases**

1. For the purpose of Sec.120& Sec.127, Case means, in relation to any person whose name is specified in any order or direction issued
2. POWER OF TRANSFER: The PDGIT/DGIT/PCCIT/CCIT/PCIT/CIT
3. RIGHTS OF ASSESSEE:
  - a) Before transferring the case, the assessee shall be given an opportunity of being heard.
  - b) It is not necessary to give an opportunity to the



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assessee, if the case is transferred between Assessing Officers within the same city, locality or place.

c) **Ajanta Industries vs CBDT** if reason for transfer of case is not specified then such transfer shall be invalid.

d) In case of transferred between two cities then approval of CCIT/DGIT must be obtained .

4. Where the Assessing Officer from whom the case is transferred and the transferee Assessing Officer do not fall under the control of the same DGIT/ CCIT/ CIT, then both the jurisdictional DGIT/ CCIT/ CIT shall mutually decide and pass the necessary transfer order.  
If such jurisdictional DGIT/ CCIT/ CIT are not in agreement, then the matter shall be decided by CBDT or any authority authorised by CBDT.

5. Requirement of fresh notice: It is not necessary to re-issue any notice by the Transferee AO, which is already issued by the previous AO.

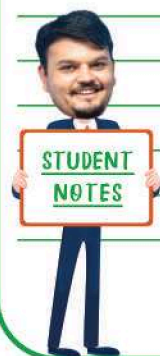
6. Stage at which case can be transferred

- |  |
|--|
| 1. ROI Processed - not Possible                            |
| 2. Notice Send - Possible                                  |
| 3. Assessment Started - Possible                           |
| 4. Assessment completed - Possible but final order pending |
| 5. Assessment completed & - Not order Issued Possible      |

“ case can be transferred at any stage of Proceeding”

### Sec.129 Change in incumbent of office

1. Whenever an ITA ceases to exercise jurisdiction & is succeeded by another who has and exercises jurisdiction, the ITA so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor.



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2. The assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be reopened or that before any order of AO is passed against him, he be reheard.

[Notice shall be issued for change of incumbent of office, if the same is not issued Assessment would be bad in law - Automotive Tyre Manufacturing Association )(SC)]

### Sec.220[6] Duties of AO

1. Treat the Assessee not in default in respect of amount in dispute even though time limit for payment is expired.
2. AO Should apply his mind to the relevant factors such as assessment history of the assessee, his conduct and cooperation to the department, the point raised in appeal
3. Arbitrator required : He must remember that he is not the final arbiter of the dispute involved, but only the first amongst the statutory authorities.  
[Rajan Nair v ITO 1987]
4. The power u/s 220(6) is coupled with the duty to take into consideration all relevant ground. It should be exercised reasonable and fairly.

### Different Authorities & there Power [Self read]

CIT	CIT [A]
<ol style="list-style-type: none"> <li>1. He is required to perform such functions as may be assigned</li> <li>2.Registration of Trust or Institution Sec.12A</li> <li>3.Transfer of cases[Sec.127]</li> <li>4.Search and seizure[Sec.132]</li> <li>5.Revision of Order</li> <li>6.Reduction or waiver of penalty</li> <li>7.Setoff of refund against tax payable [Sec.245]</li> <li>8.Granted Sanction for reopen of assessment after 4 years [Sec.151]</li> </ol>	<ol style="list-style-type: none"> <li>1.Power regarding discovery,production of evidence Sec.131.</li> <li>2.power to call for Information.</li> <li>3.Disposal of Appeal.</li> <li>4.Power to Impose Penalty.</li> <li>5.Setoff and refund of Tax Payable.</li> <li>6.Inspection of Register u/s134.</li> </ol>

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### Relevant Case Laws

Case Law	Regen Powertech Private Ltd v. CBDT & Another [2019] (Mad)
Issue Involved	Can the CBDT refuse to condone delay in filing the tax return, where such delay was caused by circumstances beyond the control of the assessee?
Decision by Court	<p>The assessee company was engaged in the manufacture of wind energy generators, Assessee File the ROI with a delay of 37 days. The assessee contended that the delay was on account of obtaining the audit report required under section 44AB. The appointed firm of chartered accountants (SRB) had some reservations regarding the valuation of the assessee company's business transfer which was communicated to the assessee only on the last day of filing the audit report. In such circumstances, the assessee had to look for an alternative auditor which could also be done subject to a "No Objection Certificate" from SRB. The "No Objection Certificate" was only issued after which ROI was filled. The assessee contends that the delay in filing the return was beyond its control.</p> <p>Provisions: CBDT has power to condone the delay u/s 119</p> <p>Conclusion: HC Allowed the condonation of delay &amp; opined that the CBDT should have exercised its discretion in a proper manner and condoned the delay.</p> <p>Note: belated Return can also be revised.</p>

### Know Your Exams

- P.1 Examine the correctness of the statement "The jurisdiction of an AO cannot be objected by the assessee".[M-08]
- P.2 "The AO while acting under section 220(6) should not act as mere tax-gatherer but as a quasi-judicial authority."[M-92]

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### Multiple Choice Questions

- |  |   |     |     |     |     |     |     |     |     |     |  |
|--|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|--|
| 1. Transfer of cases from one AO to another is governed u/s  | a) 117 b) 118 c)119 d) 120  |     |     |     |     |     |     |     |     |     |  |
| a) 124 b)125 c)127 d) 129  | 7. fresh notice is not required for transfer of cases   |     |     |     |     |     |     |     |     |     |  |
| 2. Assessee can object the jurisdiction of AO within   | a) Correct b) Incorrect   |     |     |     |     |     |     |     |     |     |  |
| a) 2m b)1m c)3m d)none   | 8. Income tax authority shall itself include CBDT for purpose of Act  |     |     |     |     |     |     |     |     |     |  |
| 3. CBDT can issue order to AO for making a particular Assessment in a particular manner              | a) correct b) Incorrect   |     |     |     |     |     |     |     |     |     |  |
| a) True b) False c) none   | 9. The succeeding AO shall start case from the stage where  |     |     |     |     |     |     |     |     |     |  |
| 4. Circular is binding on ____   | a) The earlier officer has leaved   |     |     |     |     |     |     |     |     |     |  |
| a) Department b) Assessee c) both  | b) from starting  |     |     |     |     |     |     |     |     |     |  |
| 5. If the case is transfered within the same city opportunity of being heard is not required.        | c) from wherever he wants   |     |     |     |     |     |     |     |     |     |  |
| a) True b) false   | d) none of the above.   |     |     |     |     |     |     |     |     |     |  |
| 6. CBDT can make a authority subordinate to another authority this power is contained in Section. __ | Answers:  |     |     |     |     |     |     |     |     |     |  |
|  | <table border="1" style="border-collapse: collapse; margin: auto;"> <tr> <td style="padding: 2px 10px;">1.c</td> <td style="padding: 2px 10px;">2.b</td> <td style="padding: 2px 10px;">3.b</td> <td style="padding: 2px 10px;">4.a</td> <td style="padding: 2px 10px;">5.a</td> </tr> <tr> <td style="padding: 2px 10px;">6.b</td> <td style="padding: 2px 10px;">7.a</td> <td style="padding: 2px 10px;">8.a</td> <td style="padding: 2px 10px;">9.a</td> <td style="padding: 2px 10px;"></td> </tr> </table> | 1.c | 2.b | 3.b | 4.a | 5.a | 6.b | 7.a | 8.a | 9.a |  |
| 1.c  | 2.b   | 3.b | 4.a | 5.a |     |     |     |     |     |     |  |
| 6.b  | 7.a   | 8.a | 9.a |     |     |     |     |     |     |     |  |

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Space for Important Points / Notes