

Chapter 9 : Miscellaneous - Assessment

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Sec 220 When tax payable & when assessee deemed in default

Sec 220(1) - Any amount, otherwise than by way of advance tax, specified as payable in a notice of demand u/s 156 shall be paid within 30 days of service of the notice at the place & to the person mentioned in the notice.

Provided that, where the AO has any reason to believe that it will be detrimental to revenue if the full period of 30 days aforesaid is allowed, he may, with the previous approval of the JCIT, direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of 30 days aforesaid, as may be specified by him in the notice of demand.

Sec 220(1A) - Where any notice of demand has been served upon an assessee and any appeal or other proceeding, as the case may be, is filed or initiated in respect of the amount specified in the said notice of demand, then, such demand shall be deemed to be valid till the disposal of the appeal by the last appellate authority or disposal of the proceedings, as the case may be, and any such notice of demand shall have the effect as specified in sec 3 of the Taxation Laws (Continuation & Validation of Recovery Proceedings) Act, 1964.

Sec 220(2) - If the amount specified in any notice of demand u/s 156 is not paid within the period limited u/s 220(1), the assessee shall be liable to pay simple interest at 1% for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in sub-section (1) and ending with the day on which the amount is paid.

Provided that, where as a result of an order u/s 154 / 155 / 250 / 254

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/ 260 / 262 / 264 / an order of ITSC u/s 245D(4), the amount on which interest was payable under this section had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded.

Provided further that where as a result of an order under sections specified in the first proviso, the amount on which interest was payable under this section had been reduced and subsequently as a result of an order under said sections / sec 263, the amount on which interest was payable under this section is increased, the assessee shall be liable to pay interest u/s 220(2) from the day immediately following the end of the period mentioned in the first notice of demand, referred to in sec 220(1) and ending with the day on which the amount is paid.

Provided also that in respect of any period commencing on or before the 31st day of March, 1989 and ending after that date, such interest shall, in respect of so much of such period as falls after that date, be calculated at the rate of 1.5% for every month or part of a month.

Sec 220(2A) - Notwithstanding anything contained in sec 220(2), the Principal Chief Commissioner / Chief Commissioner / PCIT / CIT may reduce or waive the amount of interest paid or payable by an assessee under the said sub-section if he is satisfied that-

- 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 said sub-section was due to circumstances beyond the control of the assessee ; and
- 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.

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Provided that the order accepting or rejecting the application of the assessee, either in full or in part, shall be passed within a period of 12 months from the end of the month in which the application is received.

Provided further that no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard.

Provided also that where any application is pending as on the 1st day of June, 2016, the order shall be passed on / before the 31st day of May, 2017.

Sec 220(2B) - Notwithstanding anything contained in sec 220(2), where interest is charged u/s 201(1A) on the amount of tax specified in the intimation issued u/s 200A(1) for any period, then, no interest shall be charged u/s 220(2) on the same amount for the same period.

Sec 220(2C) - Notwithstanding anything contained in sec 220(2), where interest is charged u/s 206C(7) on the amount of tax specified in the intimation issued u/s 206CB(1) for any period, then, no interest shall be charged under sub-section (2) on the same amount for the same period.

Sec 220(3) - Without prejudice to the provisions contained in sec 220(2), on an application made by the assessee before the expiry of the due date under sub-section (1), the AO may extend the time for payment or allow payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case.

Sec 220(4) - If the amount is not paid within the time limited under sub-sec (1) / (3), as the case may be, at the place and to the person mentioned in the said notice the assessee shall be deemed to be in default.

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Sec 220(5) - If, in a case where payment by instalments is allowed u/s 220(3), the assessee commits defaults in paying any one of the instalments within the time fixed under that sub-section, the assessee shall be deemed to be in default as to the whole of the amount then outstanding, and the other instalment or instalments shall be deemed to have been due on the same date as the instalment actually in default.

Sec 220(6) - Where an assessee has presented an appeal u/s 246 / 246A the AO may, in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of.

Sec 220(7) - 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 AO shall not treat the assessee as 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, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

Explanation - For the purposes of this section, income shall be deemed to have been brought into India if it has been utilised or could have been utilised for the purposes of any expenditure actually incurred by the assessee outside India or if the income, whether capitalised or not, has been brought into India in any form.

Sec 221 Penalty payable when tax in default

Sec 221(1) - When an assessee is in default or is deemed to be in default in making a payment of tax, he shall, in addition to the amount of the arrears and the amount of interest payable u/s 220(2), be liable, by way of penalty, to pay such amount as the AO may direct, and in the case of a continuing default, such further amount or amounts as the AO may, from time to time, direct, so, however, that the total amount of penalty does not exceed the amount of tax in arrears.

Provided that before levying any such penalty, the assessee shall be given a reasonable opportunity of being heard.

Provided further that where the assessee proves to the satisfaction of the AO that the default was for good and sufficient reasons, no penalty shall be levied under this section.

Explanation - For the removal of doubt, it is hereby declared that an assessee shall not cease to be liable to any penalty under this sub-section merely by reason of the fact that before the levy of such penalty he has paid the tax.

Sec 221(2) - Where as a result of any final order the amount of tax, with respect to the default in the payment of which the penalty was levied, has been wholly reduced, the penalty levied shall be cancelled and the amount of penalty paid shall be refunded.

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