

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF DIRECT TAXES
NEW DELHI

Instruction No. 9/2006, dated 7-11-2006

Instruction on Receipt/Revenue Audit Objections

1. Board has issued a number of Instructions from time-to-time on various aspects of the work relating to Revenue Audit. These Instructions, inter alia, addressed to the procedure to be followed at different stages of Audit Objections, appropriate remedial action thereon, schedule of replies, monitoring and accountability measures, and quite a few of these continue to be applicable simultaneously. A need is therefore felt to consolidate all such instructions into one all encompassing instruction so that management and processes relating to audit objections are streamlined with a greater sense of accountability. The present instruction is accordingly issued in suppression of Instruction Nos. 159, 484, 499, 612, 828, 854, 1046, 1057, 1071, 1176, 1205, 1473, 1598, 1609, 1928 and 1971 for strict compliance by all concerned.

2. Broad Outline of Procedure :

2.1 The programme of Local Audit is communicated by the Revenue Audit at least one month before the Local Audit. All co-operation & assistance should be extended to the Revenue Audit Party (RAP) during the audit process. The records requisitioned by the RAP should be entered in the 'Register' maintained for this purpose and complete records should be made available. If it is not possible to make available any particular record required by the RAP, the reasons for the same should be communicated to the RAP, in writing. The record should on no account be withheld on flimsy grounds.

2.2 The CsIT should ensure that complete and accurate record of revenue audit objections are maintained in the 'Registers' prescribed in Chapter-12 of the Internal Audit Manual, 2003 [ref pages 156-157], and in the Revenue Audit Module of AST. The CsIT should also ensure that the pendency of objections are reconciled within a month of receipt of the annual statements furnished by the AGs to CsIT

2.3 The Revenue Audit party issues an Audit Memo (Half Margin Note) on any irregularity or mistake observed in regard to individual cases. The AO should furnish a reply to the Audit Memo, in all cases, including cases where the validity of the objection needs further consideration, stating clearly whether he agrees with the Audit Memo, within three days of the date of its receipt.

2.4 The Dy. Accountant General (DAG) forwards the Local Audit Report (LAR) to the AO with a copy to the CIT. The AO should send his report on the objections in respect of the individual cases included in the respective audit 'paras' of Part-I (Introductory and Outstanding Objections of the previous Report) and Part-II (Major Irregularities and Important Points) of the LAR to the CIT through the Addl. CIT Range within 30 days of the receipt of LAR. No reply is required to be sent regarding Part-III, but appropriate remedial action must be taken by the AO within three months.

2.5 On receipt of the AO's report, the Jt./Addl. CIT Range will examine the audit objections in the light of the AO's comments and send a reply to the CIT within a

fortnight. The CIT should take a decision and send an appropriate reply to the AG / DAG within a fortnight thereafter.

2.6 Where the AG does not accept the views of the Commissioner and/or is not prepared to drop the audit objection, he conveys this to the CIT through a 'Statement of Fact' (SOF).

The CIT should send appropriate reply to the AG within a fortnight of the receipt of 'SOF'.

2.7 In a case where the AG does not accept the views of the Commissioner and / or is not prepared to drop the audit objection, the audit objection is converted into a 'Draft Para', proposed to be included in the Audit Report of the C&AG of India. On receipt of the Draft Para, the CIT, through the CCIT, should send a report immediately to the Board so as to enable the Board to submit reply to the C&AG of India within the scheduled six weeks. Indeed, if the earlier stages of processing of the objections had been carefully gone into, the required information should already be on the CIT's file.

2.8 In respect of the 'Draft Paras', a copy of the Proforma report is to be sent to the DIT(Audit) so as to enable him to prepare comprehensive Action Taken Notes (ATNs) on the Audit Paras [Performance Audit] included in the Audit report No. 12 [now renumbered as 8 from 2006] of the C&AG, to be submitted to the C&AG of India through the Board.

2.9 On receipt of the above-mentioned report from the CCIT/CIT, the Board will inform the C&AG inter alia about the acceptance or non-acceptance of the audit objection, endorsing a copy to the CCIT/CIT/DIT(Audit). On receipt of the above endorsement, the DIT(Audit) will move ahead with the preparation of the comprehensive ATNs after securing such further information and particulars from the field formations as may be required.

2.10 After the receipt of the Audit Report presented to the Parliament, the DIT(Audit) will give concluding shape to the ATNs on Audit Paras, and send these to the Board, through the DGIT(Admin.), for submission to the C&AG of India after necessary vetting and consideration in the Board.

3. Accountability:

3.1 Furnishing of records to Revenue Audit : It has been noticed that, in spite of the existing Instruction Number 1071 dated 28-6-1977, records and the relevant registers are not being made available to RAP without adequate reasons, which,

(a) invites adverse comments from the Hon'ble Public Accounts Committee and the C&AG of India, and,

(b) results in loss of substantial revenue which could be collected on account of audit objection had the records been produced to the Audit in time.

Henceforth, the C.Cs./Ds.G. IT., through the Cs.I.T concerned, shall ensure that,

(a) the relevant records are given to the officials of the C&AG on requisition, and that,

(b) wherever records are not given, without adequate reasons, explanation of the officers/staff concerned is called and suitable action taken against the defaulting officers/staff.

3.2 Role of Supervisory Officers : In order to exercise an effective control with regard to timely and appropriate remedial action on audit objections, it has been decided that,

(a) in respect of audit objections involving revenue of Rs. 1,00,000 or more in Income Tax/Corporate Tax cases and Rs. 30,000 or more in other Direct Taxes cases, the Commissioners concerned shall be personally responsible for careful examination of such objections and issue of instructions to the A.Os on the appropriate remedial action to be taken within a month of the receipt of the Local Audit Report;

(b) in respect of audit objections involving revenue below the limits prescribed in (a) above, the Commissioners should ensure that the Addl./Jt. Cs.I.T Ranges issue similar instructions to the AOs within the said period of one month; and,

(c) the choice of such remedial action, whether under section 154 or 147 or 263, should be carefully considered in the light of existing legal provisions and its sustainability in appeal.

4. Remedial action :

(i) An Audit objection should be accepted and remedial action should be taken in a case where the audit objection relating to an error of facts or an issue of law is found to be correct.

(ii) Even if objection is not accepted by the CIT, remedial action should be initiated, as a precautionary measure, in respect of such audit objections, save as provided in para (v) below.

(iii) Appropriate remedial action should invariably be initiated within two month of the receipt of the Local Audit Report, and necessary orders should be passed within six months thereafter.

(iv) Remedial action should invariably be initiated in respect of the following circumstances,

(a) where an assessment under section 143(1) was made and the objection pointed out by Audit could not have been considered under the provisions of section 143(1);

(b) where the interpretation of fact or law by the audit is in conflict with any decision of a High Court (not being the jurisdictional High Court) which is squarely applicable to the facts of the case, or

(c) where there are conflicting decisions of different High Courts (not being the jurisdictional High Court), or

(d) where the matter involves interpretation of statute and there is no decision of any High Court on the matter.

However, in cases falling under (b), (c) and (d) above, the remedial action initiated can be dropped only with the prior approval of the Board. For this purpose, the CIT should immediately send a reference to the Board for decision, not later than three months from receipt of LAR by the CIT concerned, stating cogently therein the detailed reasons for consideration of the proposal for dropping of the remedial action initiated.

(v) Remedial action need not be initiated in a case where,

(a) the CIT is of the view that the interpretation of fact or law by the audit is in conflict with a decision of the Supreme Court and the decision squarely applies to the facts of the case, or

(b) the CIT is of the view that the interpretation of fact or law by the audit is in conflict with a decision of the jurisdictional High Court, which is squarely applicable to the facts of the case and the operation of which has not been stayed by the Supreme Court, or

(c) the CIT is of the view that the Assessing Officer has acted in conformity with Board's Instruction/Circular, or

(d) the audit objection raised is on facts, and the CIT, after necessary verification, is of the opinion that the audit objection is factually incorrect.

However, considering that C.Cs/Ds.G IT. are the competent authority for accepting or contesting adverse judgments of High Courts, in respect of (a) and (b) above prior approval of the C.Cs / Ds.G. IT. concerned should be obtained for taking a decision for not initiating remedial action, and in respect of (c) above the matter should be referred to the relevant Divisions of the Board for examination and decision.

The CsIT should ensure that necessary reply / reference is sent to the AG (Audit) concerned / the Board within a month of the receipt of the Local Audit Report.

5. Second Appeal in Cases involving Revenue Audit Objection :

(i) Where a Revenue Audit objection has been accepted by the CIT or by the Ministry and an assessment has been framed in pursuance thereof, and the first appellate authority passes an order taking a view contrary to that of Audit, the adverse appellate order should be carefully scrutinised and appeal should be preferred if the order is not justified either in law or on facts;

(ii) Where a Revenue Audit objection has not been accepted by the CIT or by the Ministry but an assessment has been framed in pursuance of the audit objection, an adverse appellate order by the first Appellate authority should be dealt with in the same manner as in the case of an objection accepted by the CIT and / or the Ministry till the AG / C&AG agrees with the views of the Department / Ministry;

(iii) However, if it is proposed not to file second appeal, the CIT should record reasons as to why an appeal is not considered necessary despite the audit objection.

6. Draft Paras on Audit Objections – Proforma Report and Follow-up Action :

In order to make the Proforma report more meaningful and effective with regard to control and accountability, the same has been modified and is enclosed as Annexure-I. Henceforth, all replies should be sent to the Board in this modified format, with all columns duly filled up & complete in all respects.

(i) The Proforma Report in Part A should be sent to the Board strictly within four weeks of the receipt of the Draft Para Key by the CCs (CCA), with a copy to the DIT (Audit); and,

(ii) the Proforma Report in Part B should be sent to the DIT (Audit) within two months of the receipt of the Draft Para Key by the CCs (CCA), with a copy to the Board, to facilitate preparation of the Action Taken Note (ATN).

7. Explanation of officers / staff concerned and disciplinary action:

With a view to enforcing accountability, the CCsIT / DsGIT concerned should ensure that the following procedure is strictly followed:

7.1 Ledger Card : The present system of maintaining Ledger Cards, as detailed in Chapter 5 of the Internal Audit Manual, 2003 should be followed meticulously.

- (a) the Ledger Cards should be maintained by the CsIT concerned, and,
- (b) a quarterly report thereof should be sent to the CCs (CCA) [the CIT (Audit) in metropolitan charges], and,
- (c) the CCs (CCA) [the CIT (Audit) in metropolitan charges] should maintain a centralized data of the Ledger Cards of his region;

7.2 Calling of Explanation & Action thereon : Explanation of the officer and staff concerned should invariably be obtained where the Revenue Audit objection, involving revenue of Rs. 1,00,000 or more in Income-tax/Corporate Tax and Rs. 30,000/- or more in other Direct Taxes, have been accepted, or the mistakes, inter alia, arise from any one or more of the following reasons:-

- (a) Failure to follow departmental instructions/circulars;
- (b) Failure to follow binding judicial decisions; and
- (c) Palpable mistakes on fact or law, or mistakes arising from gross negligence or mala fide action.

7.3 Besides, explanation of the officer and staff concerned should be obtained,

- (a) in a case of default in adhering to the time-limit prescribed for various actions mentioned in paras 2.3, 2.4, 2.5, 2.6, 3.2,4(iii), 4(iv), 4(v), 6(i) and 600 herein above, and,
- (b) where failure to take timely and appropriate remedial action in respect of objections raised by Revenue Audit leads to irretrievable loss of revenue.

7.4 Further, in cases of objections involving arithmetical inaccuracy in calculation or computation, the accountability of the dealing staff, besides that of the assessing officer, cannot be over-emphasized. Hence, if the mistake is, inter alia, on account of any one or more of the following reasons, the explanation of the staff responsible for the mistake should also be obtained,

- (a) where an issue is considered / discussed in the body of assessment order, and necessary addition on the issue is directed to be made, or where a deduction is directed to be allowed by the Assessing Officer, but such directions are not taken into account at the time of calculation of tax, interest and surcharge;
- (b) where there is totalling mistake in the computation of income;
- (c) where an income disclosed in the return is not included in the computation in the assessment order, except where the Assessing Officer has discussed in the body of assessment order and directed not to include it;
- (d) where there is wrong calculation of tax including application of wrong rate of tax;
- (e) where there is wrong calculation of interest including application of wrong rate of interest or wrong calculation of period for which interest is leviable;

- (f) where any income is added in the computation of income more than once;
- (g) where wrong set-off of brought forward losses, unabsorbed depreciation, loss on long/ short term capital gain etc. in the scrutiny/search assessments, not commented by the Assessing Officer in the assessment order, has been allowed;
- (h) where wrong verification of, or failure to verify, the arrear demand before the issue of refund results in wrongful issue of refund;
- (i) where credit of pre-paid taxes is wrongly allowed.

7.5 However, where objection is against summary assessment under section 143(1) and the objection pointed out by Audit could not have been considered at the time of summary assessment under section 143(1), the explanation of the AO & staff should not be called for.

7.6 Procedure for Appropriate Action against the erring officer/staff;

- (a) The CIT in whose charge the mistake has occurred [the CCIT concerned where the default in terms of 7.3 above is on part of the CIT] should call for the explanation of the officer / staff responsible for the mistake, and indicate whether the explanation is acceptable or not and as to whether the mistake was bona fide or otherwise;
- (b) After considering the explanation of the officer / staff concerned, where it is proposed that a simple warning should be issued, the final decision to give simple warning should be taken by the CIT in whose charge the mistake occurred but he should communicate his decision along with the facts of the case to the Commissioner under whom the officer / staff is working and the latter should administer the warning;
- (c) where the mistake pointed out in the Revenue Audit objection is of a serious nature, which may call for penal action against the officer / staff concerned, the CIT in whose charge the mistake occurred (hereinafter referred as first CIT) shall, after considering the explanation of the officer / staff concerned, form a view in this regard in consultation with the CIT under whom the official is presently working. The first CIT shall accordingly recommend appropriate action in the case to the Member (A&J), through CCIT(CCA), for necessary examination in the Board. In a case where the Member (A&J) decides that disciplinary proceedings needs to be initiated, the CCIT(CCA) concerned would then refer the case to the appropriate Disciplinary Authority along with all material evidence relevant to the case.

7.7 The DIT (Audit) would act as the field arm of the Board and monitor strict compliance with the above instructions, except that at para 7.6 above, and ensure that the action is taken to a logical conclusion.

8. The above instructions would apply mutatis mutandis to the Revenue Audit's observations in cases covered in Systems Review so far as taking of remedial action, accountability measures and necessary action against the officer / staff responsible for the mistake is concerned.

9. These instructions may be brought to the knowledge of all concerned for strict compliance. This issues with the approval of the Board:

			Annexure-I

PROFORMA REPORT ON THE DRAFT AUDIT PARA

No. _____ PROPOSED TO BE INCLUDED IN THE AUDIT REPORT BY THE
C&AG FOR THE YEAR _____

Board's **reference calling for the
report** _____

Dated _____

PART A'

1.	(a)	Name of the assessee	
	(b)	CIT's Charge	
2.	(a)	Assessment year(s) to which the audit objection relates	
	(b)	Accounting year(s) of the assessee	
	(c)	Date of filing of return(s) (where relevant)	
	(d)	Date of assessment/other order(s), if any, and section under which the assessment/other order(s) were made	
	(e)	TOTAL INCOME/NET WEALTH RETURNED (where applicable)	
	(f)	TOTAL INCOME/NET WEALTH ASSESSED (where applicable)	
	(g)	Demand raised on original assessment or Demand as per any other order which is subjected to audit (Both gross demand and net demand after adjustment of pre-paid taxes may be indicated)	
	(h)	Amount of revenue mentioned in the draft audit para	
3.	(a)	Gist of the audit objection	
	(b)	CIT's comments	

	(i)	If the facts stated by Audit are not correct, full & correct facts must be stated	
	(ii)	Reasons for acceptance or non-acceptance must invariably be given	
	(iii)	If the objection is acceptable, the circumstances in which the mistake occurred must be stated	
4.	(a)	Date of issue of notice(s) initiating remedial action and the section under which issued ?	
	(b)	Whether appropriate remedial action was taken with CIT's/Addl. CIT's prior approval as per Board's instruction. If so, when? If not, reasons thereof.	
	(c)	Date of order revising the assessment(s)/other order(s)	
	(d)	Amount of additional demand raised ascribable to Audit objection or amount of refund allowed/adjusted	
PART'A' Contd.			
	(e)	If the amount of revenue mentioned by the Audit is not correct, give reasons. (If the Variation is due to Variation of the total income after receipt of audit objection on account of appeal, revision etc., the same should be clearly indicated.)	
5.	(a)	If no remedial action is taken, give reasons	
	(b)	If remedial action is barred by limitation, reasons and circumstances thereof.	
RECEIPT OF DRAFT AUDIT PARA FROM BOARD			: Date

PROFORMA REPORT SENT TO BOARD	: Date
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