

ASSEESSEE IN DEFAULT

SECTION 220/221: ASSESSEE IN DEFAULT

Any amount payable in a notice of demand under section 156 shall be paid within **30 days of the service of such notice**. On failure to pay whole or part of the demand within the 30 days, assessee shall be deemed to be an **ASSEESSEE IN DEFAULT for the amount remaining unpaid**.

CONSEQUENCES OF BEING AN ASSESSEE IN DEFAULT

- I. **Interest under section 220:** Simple interest @ 1% per month is payable on the amount remaining unpaid, for the period beginning from the day **immediately following the 30 days** as aforesaid AND **ending on the date on which payment is made**. (Part of the month is considered as full month).

Note 1: The interest under section 220 may be waived/ reduced by the CIT/ CCIT, if CIT/CIT 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 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.

Order accepting or rejecting the application of the assessee, shall be passed within 12 months from the end of the month in which the application is received.

Note 2: Where as a result of an order of rectification/appeal/revision, the **amount on which interest** was payable under section 220 had been reduced, then such **interest payable/ paid shall also be reduced accordingly**.

If the amount on which interest was payable under section 220 had been reduced in rectification/appeal/revision as stated above, but such amount on which interest was payable is **subsequently increased in further appeal/revision, then interest shall be computed on the increased amount from the day immediately following the end of period given in first notice of the demand**.

Note 3: Where any notice of demand has been served upon an assessee and any appeal is filed 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

Example: If notice of demand is made by Assessing Officer on 01.01.2022 and demand is reduced to NIL by CIT(A)/ ITAT/ High Court and Supreme Court on 02.01.2029 holds that demand was valid, then there is no need to issue fresh notice of demand. The demand notice issued on 01.01.2022 shall be valid.

II. **Penalty under section 221:** If the assessee is deemed as an Assessee in Default then in addition to interest under section 220, he shall be liable to pay a penalty which the A.O. may levy. However **such penalty shall not exceed the amount in arrears.**

Note 1: The penalty under section 221 shall not be levied if the assessee proves that the default was for good and sufficient reasons.

Note 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 or partly reduced, the penalty levied shall be cancelled or partly reduced and the amount of penalty paid **shall be refunded.**

Illustration 1:

An assessment for assessment year 2017-18 is made on 31.12.2018 and a demand notice of ₹ 1 crore is served on the assessee on 31.12.2018. The assessee did not pay the demand and filed an appeal to CIT(Appeals). The CIT(Appeals) by his order dated 30.04.2019 deleted the additions and the demand became NIL. The department filed an appeal to ITAT and then to High Court and appeal was decided in favour of the assessee by order under section 254 dated 01-01-2020 and order of 260A dated 01-01-2022. The Supreme Court however decided against the assessee and by its order dated 01.01.2023 affirmed the order of Assessing Officer. The assessee pays demand of ₹ 1 crore on 15.01.2023.

The assessee shall pay interest under section 220 for being an assessee in default from 31.01.2019 to 15-01-2023. Assessee shall pay interest from the date the original demand was created (after allowing 30 days relaxation) till the date the appeal is finally disposed-off i.e., from 31.01.2019 to 15.01.2023.

Illustration 2:

Suppose in illustration 2, assessee has paid the demand of ₹ 1 crore on 31.1.2019. He was granted refund of ₹ 1 crore on 31.5.2019 after he won the appeal from CIT(Appeals).

The demand shall be deemed to be valid from the date demand was created and assessee shall pay interest under section 220 from 1.06.2019 to 15.01.2023.