

¹[CHAPTER XVIIIIB
ALTERNATIVE DISPUTE RESOLUTION

152F. Alternative Dispute Resolution.—

- (1) Notwithstanding anything contained in Chapter XIX any dispute of an assessee lying with any income tax authority, Taxes Appellate Tribunal or Court may be resolved through Alternative Dispute Resolution (hereinafter referred to as ADR) in the manner described in the following sections of this Chapter and rules made thereunder.
- (2) Board may, by notification in the official Gazette, specify the class or classes of assessee eligible for ADR or extend the area or areas in which these provisions may be applied.

152G. Commencement of ADR.—

The ADR as mentioned in this Chapter shall come into force on such date and in such class or classes of assessee as the Board may determine by notification in the official Gazette.

152H. Definition.—

For the purposes of this Chapter, unless the context otherwise requires—

- (a) “authorised representative” means an authorised representative mentioned in sub-section (2) of section 174;
- (b) “bench” means bench of Taxes Appellate Tribunal;
- (c) “Commissioner’s Representative” means an officer or officers nominated by the Commissioner of Taxes from among the income tax authorities under section 3 to represent in the Alternative Dispute Resolution process under this Chapter;
- (d) “court” means the Supreme Court;
- (e) “dispute” means an objection of a
 - (i) assessment of income above *Sec. 152H, 152I* by him in his return of income for the relevant year, or
 - (ii) order of an appellate authority under chapter XIX which results in assessment of income which is above the declared amount in his return of income;

152I. Application for alternative resolution of disputes.—

- (1) Notwithstanding anything contained in Chapter XIX an assessee, if aggrieved by an order of an income tax authority, may apply for resolution of the dispute through the ADR process.
- (2) An assessee may apply for ADR of a dispute which is pending before any income-tax authority, tribunal or court.
- (3) All cases dealt with under sub-section (2) are subject to permission of the concerned income-tax authority ¹[, tribunal] or the court, as the case may be:

Provided that after obtaining such permission from the income tax authority, Tribunal or the court and upon granting of such permission, the matter shall remain stayed during the ADR negotiation process.

- (4) The application shall be submitted in such form, within such time, accompanied with such fees and verified in such manner as may be prescribed.
- (5) The application is to be submitted to the respective Appellate Joint Commissioner of Taxes or Appellate Additional Commissioner of Taxes or Commissioner of Taxes (Appeals) or Taxes Appellate Tribunal, as the case may be.

¹ Ins. new Chapter XVIIIIB by F. A. 2011

¹ Ins. by F. A. 2015

- (6) In the case of a dispute pending before either Division of the Supreme Court, the assessee shall obtain the permission of the court prior to filing an application under sub-section (2), by filing an application before the court. ¹ If an application is filed before the court, the court, if an application being made before it, may pass an order allowing the matter to be referred to the Appellate Tribunal or High Court Division as it deems fit. *Sec. 152II, 152J, 152K, 15L*

¹**[152II. Stay of proceeding in case of pending appeal or reference at Appellate Tribunal or High Court Division.—**

Where an assessee has filed an application for ADR for any income year and for the same income year, the Deputy Commissioner of Taxes has filed an appeal before the Appellate Tribunal or the Commissioner has made a reference before the High Court Division and no decision has been made in that respect by the Appellate Tribunal or High Court Division as the case may be, the proceeding of such appeal or reference shall remain stayed till disposal of the application for ADR.]

²**[152J. Eligibility for application for ADR.—**

An assessee shall not be eligible for application to ADR if he fails to pay tax payable under section 74 where the return of income for the relevant year or years has been submitted.]

152K. Appointment of Facilitator and his duties and responsibilities.—

For the purposes of resolving a dispute in an alternative way, the Board may select or appoint Facilitator and determine his ³[fees,] duties and responsibilities by rules.

152L. Rights and duties of the assessee for ADR.—

- (1) Subject to sub-section (2), the assessee applying for ADR shall be allowed to negotiate himself personally or along with an authorized representative, with the Commissioner's Representative for the concerned dispute under the facilitation and supervision of the Facilitator.
- (2) The Facilitator may exempt the applicant-assessee from personally attending the negotiation process and may be allowed to be represented by an authorised representative, if he has sufficient reasons for his absence.
- (3) While submitting an application for ADR, the applicant-assessee shall submit all related papers and documents, disclose all issues of law and facts.
- (4) The applicant-assessee shall be cooperative, interactive, fair and bonafide while negotiating for resolution.
- (5) If the applicant-assessee makes any untrue declaration, submits any false document and obtains an order or assessment on that basis, the order or assessment shall be set aside, if so detected, and appropriate legal action be initiated against him.
- (6) The applicant-assessee shall be liable to pay any taxes, if due as a result of negotiation with the time frame as decided in the ADR.

152M. Nomination and responsibility of the Commissioner's Representative in ADR.—

- (1) The respective Commissioner of Taxes may nominate any income tax authority subordinate to him, not below the rank of Deputy Commissioner of Taxes to represent him in the negotiation process of the ADR.
- (2) The representative so nominated under sub-section (1) shall attend the meeting(s) of ADR negotiation process and sign the agreement of such negotiation process, where an agreement is reached.

152N. Procedures of disposal by the Alternative Dispute Resolution.—

¹ Ins. new section 152II by F. A. 2012

² Subs. by F. A. 2016

³ Ins. by F. A. 2012

- (1) Upon receiving the application of ADR, the Facilitator shall forward a copy of the application to the respective Deputy Commissioner of Taxes and also call for his opinion on the grounds of the application and also whether the *Sec. 152N, 152O* in sections 152I and 152J have been complied with.
- (2) If the Deputy Commissioner of Taxes fails to give his opinion regarding fulfillment of the conditions within ¹[five working days] from receiving the copy mentioned in clause (c) of sub-section (3), the Facilitator may deem that the conditions thereto have been fulfilled.
- (3) The Facilitator may—
 - (a) notify in writing the applicant and the Commissioner of Taxes or the Commissioner's Representative to attend the meetings for settlement of disputes on a date mentioned in the notice;
 - (b) if he considers it necessary to do so, adjourn the meeting from time to time;
 - (c) call for records or evidences from the Deputy Commissioner of Taxes or from the applicant before or at the meeting, with a view to settle the dispute; and
 - (d) before disposing of the application, cause to make such enquiry by any income-tax authority as he thinks fit.
- (4) The Facilitator will assist the applicant-assessee and the Commissioner's Representative to agree on resolving the dispute or disputes through consultations and meetings.

152O. Decision of the ADR.—

- (1) A dispute, which is subject to this Ordinance, may be resolved by an Agreement either wholly or in part where both the parties of the dispute accept the points for determination of the facts or laws applicable in the dispute.
- (2) Where an agreement is reached, wholly or in part, between the assessee and the Commissioner's Representative, *Sec. 152O* record, in writing, the details of the agreement in the manner as may be prescribed.
- (3) The recording of every such agreement shall describe the terms of the agreement including any tax payable or refundable and any other necessary and appropriate matter, and the manner in which any sums due under the agreement shall be paid and such other matters as the Facilitator may think fit to make the agreement effective.
- (4) The agreement shall be void if it is subsequently found that it has been concluded by fraud or misrepresentation of facts.
- (5) The agreement shall be signed by the assessee and the Commissioner's Representative and the facilitator.
- (6) Where no agreement, whether wholly or in part, is reached or the dispute resolution is ended in disagreement between the applicant-assessee and the concerned Commissioner's Representative for non-cooperation of either of the parties, the Facilitator shall communicate it, in writing recording reasons thereof, within fifteen days from the date of disagreement, to the applicant and the Board, the concerned court, Tribunal, appellate authority and income tax authority, as the case may be, about such unsuccessful dispute resolution.
- (7) Where the agreement is reached, recorded and signed accordingly containing time and mode of payment of payable dues or refund, as the case may be, the Facilitator shall communicate the same to the assessee and the concerned Deputy Commissioner of Taxes for compliance with the agreement as per provisions of this Ordinance.
- (8) No agreement shall be deemed have been reached if the Facilitator fails to make an agreement within ¹[two months] from the end of the month in which the application is filed.

¹ Subs. for the words "fifteen days" by F. A. 2012

¹ Subs. for the words "one month" by F. A. 2012

Sec. 152O, 152P, 152Q

- (9) Where there is a successful agreement, the Facilitator shall communicate the copy of the agreement to all the parties mentioned in sub-section (6) within fifteen days from the date on which the Facilitator and the parties have signed the agreement.

152P. Effect of agreement.—

- (1) Notwithstanding anything contained in any provision of this Ordinance, where an agreement is reached, under sub-section (9) of section 152O, it shall be binding on both the parties and it cannot be challenged in any authority, Tribunal or court either by the assessee or any other income tax authority.
- (2) Every agreement, concluded under section 152O shall be conclusive as to the matters stated therein and no matter covered by such agreement shall, save as otherwise provided in this Ordinance, be reopened in any proceeding under this Ordinance.

152Q. Limitation for appeal where agreement is not concluded.—

- (1) Notwithstanding anything contained in any provision of this Ordinance, where an agreement is not reached under this Chapter, wholly or in part, the assessee may prefer an appeal—
 - (a) to the Appellate Joint Commissioner of Taxes or Appellate Additional Commissioner of Taxes or Commissioner of Taxes (Appeals), as the case may be, where the dispute arises out of an order of a Deputy Commissioner of Taxes;
 - (b) to the Taxes Appellate Tribunal where the dispute arises out of an order of the Appellate Joint Commissioner of Taxes or Appellate Additional Commissioner of Taxes or Commissioner of Taxes (Appeals), as the case may be; and
 - (c) to the respective appellate authority or court from where the assessee-applicant has got permission to apply for ADR.
- (2) In computing the period of limitation under *Sec. 152R, 152S* the time elapsed between the filing of the application and the decision or order of the ADR shall be excluded.

152R. Post verification of the agreement.—

- (1) The Board may monitor the progress of disposal of the application for ADR in the manner as may be prescribed and ensure necessary support and coordination services.
- (2) Copies of all agreement or matter of disagreement shall be sent by the Facilitator to the respective Commissioner and Board for verification and ascertainment of whether the agreement is legally and factually correct.
- (3) After receiving the copy of agreement or matter of disagreement, if it appears to the Board that the alleged agreement is obtained by fraud, misrepresentation or concealment of fact causing loss of revenue, then such agreement shall be treated as void and the matter shall be communicated to the concerned authorities, Tribunal or court for taking necessary action.

152S. Bar on suit or prosecution.—

No civil or criminal action shall lie against any person involved in the ADR process before any court, tribunal or authority for any action taken or agreement reached in good faith.]