

DISPUTE RESOLUTION

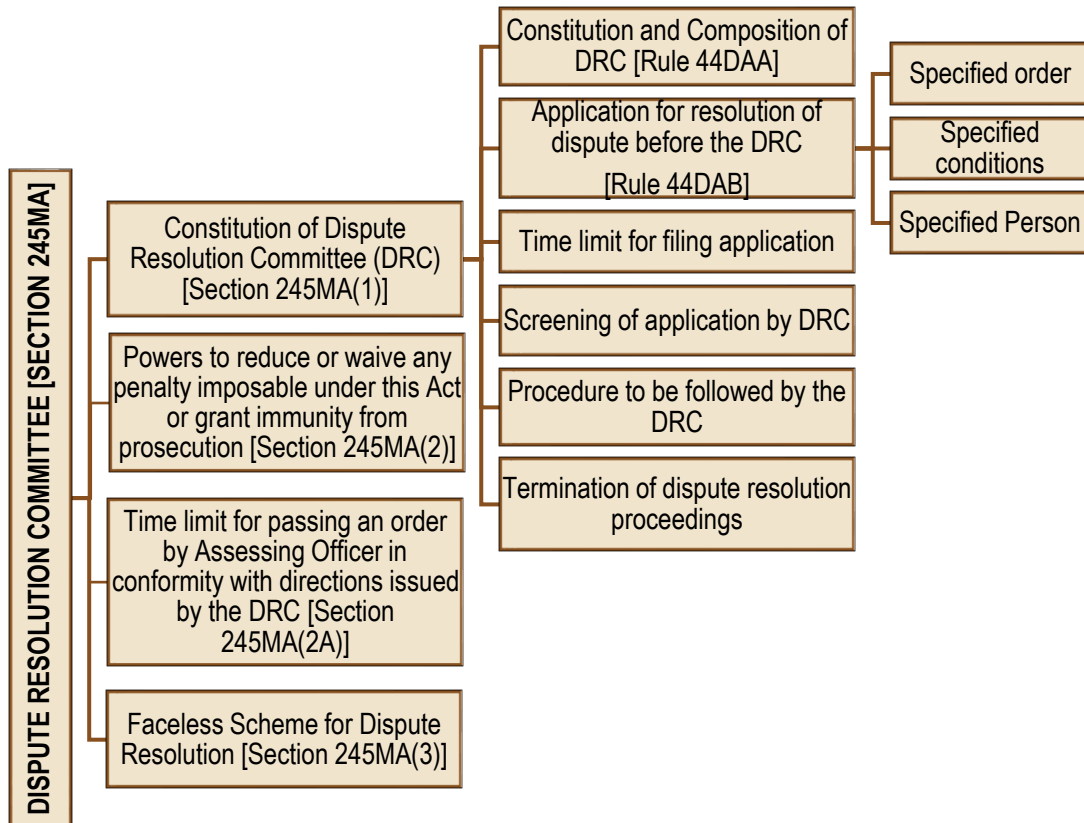


LEARNING OUTCOMES

After studying this chapter, you would be able to:

- ❑ **appreciate** the meaning of “specified order” and “specified conditions”, to be satisfied for making an application before the Dispute Resolution Committee (DRC);
- ❑ **recognise** the need for DRC and its composition and terms;
- ❑ **comprehend** the procedure to be followed by the DRC;
- ❑ **comprehend** the powers of the DRC to reduce or waive penalty or grant immunity from prosecution.
- ❑ **know** the time limit for filing application and time limit for passing an order by the Assessing Officer in conformity with the directions issued by the DRC.

CHAPTER OVERVIEW



17.1 INTRODUCTION

Income-tax Settlement Commission (ITSC) constituted by the Central Government for settlement of cases ceases to operate with effect from 1st February, 2021. Consequently, no application under section 245C for settlement of cases before the Settlement Commission can be made on or after 1st February, 2021. In order to dispose off the pending settlement applications as on 31.01.2021, the Central Government has constituted seven Interim Boards for Settlement vide Notification No. 91 of 2021 dated 10.08.2021.

Constitution of DRC – providing early tax certainty

While pending disputes are being resolved or adjudicated through the Interim Boards for Settlement, it is also necessary to prevent tax disputes in future and settle the issues at initial stage. Therefore, in order to provide early tax certainty to small and medium taxpayers, with effect from 1st April, 2021, new scheme of Dispute Resolution has been formulated for constitution of one or more Dispute Resolution Committee(s) (DRC).



17.2 DISPUTE RESOLUTION COMMITTEE [SECTION 245MA]

- (1) **Constitution of Dispute Resolution Committee (DRC) [Section 245MA(1)]:** The Central Government is empowered to constitute, one or more Dispute Resolution Committees, in accordance with the rules made under this Act, for dispute resolution in the case of such persons or class of persons, as may be specified by the Board, who may opt for dispute resolution under this Chapter in respect of dispute arising from any variation in the specified order in his case and who fulfils the specified conditions.

- (I) **Constitution and Composition of DRC [Rule 44DAA]:** Part IX-AA – Dispute Resolution Committee has been inserted in the Income-tax Rules, 1962, which comprises of Rules 44DAA, 44DAB, 44DAC and 44DAD. Rule 44DAA provides that the Central Government shall constitute a DRC for every region of Principal Chief Commissioner of Income-tax for dispute resolution. Each DRC shall consist of 3 members, as under -

Each DRC to consist of 3 members

- (a) 2 members shall be retired officers from the Indian Revenue Service (Income-tax), who have held the post of Commissioner of Income-tax or any equivalent or higher post for 5 years or more; and
- (b) 1 serving officer not below the rank of Principal Commissioner of Income-tax or Commissioner of Income-tax as specified by the Board.

Decision by majority

The members shall be appointed by the Central Government for a period of **three years**. The decision of the DRC shall be by majority.

The Central Government may fix a sum to be paid as fee to a member, who is retired officer, on a per case basis, along with a sitting fee, so decided by the Board. The

Central Government may remove any member from the DRC, by recording reasons in writing and after giving an opportunity of being heard.

- (II) **Application for resolution of dispute before the DRC [Rule 44DAB]:** DRC would resolve dispute in the case of a person who opt for dispute resolution under Chapter XIX-AA in respect of dispute arising from any variation in the **specified order** in his case and **who fulfils the specified conditions**.

Such person has to make an application for resolution of dispute before the DRC in the prescribed form accompanied by a fee of ₹ 1,000.

Fees of ₹ 1,000

- (a) **Specified order [Explanation (b) to the section 245MA read with Rule 44DAD(ii)]:** Specified order in relation to a dispute under section 245MA means:
- (i) a draft order as referred to in section 144C(1) in respect of a person in whose case variation arises as a consequence to order of the TPO passed under section 92CA(3) or a non-corporate non-resident;
 - (ii) an intimation under section 143(1) after processing income-tax returns or under section 200A(1) after processing of TDS statements or section 206CB(1) after processing of TCS statements, where the assessee or the deductor or the collector objects to the adjustments made in the said order;
 - (iii) an order of assessment or reassessment, except an order passed in pursuance of directions of the Dispute Resolution Panel;
 - (iv) a rectification order made under section 154 having the effect of enhancing the assessment or reducing the loss; or
 - (v) an order made under section 201 or an order made under section 206C(6A) deeming a person as an assessee-in-default for failure to deduct/collect tax at source or remit the same as required under the Act, after deduction/collection.

The variation in the specified order relating to default in deduction or collection of tax at source would refer to the amount on which tax has not been deducted or collected in accordance with the Act.

and in respect of which the following conditions are satisfied, namely: -

- (A) the aggregate sum of variations proposed or made in such order does not exceed ₹ 10 lakhs; **Variations ≤ ₹ 10 lakhs**
- (B) the return has been furnished by the assessee for the assessment year relevant to such order and the total income as per such return does not exceed ₹ 50 lakhs; and **TI ≤ ₹ 50 lakhs**
- (C) the order in the case of the assessee is not based on,
- (I) search initiated under section 132 of the Act or requisition made under section 132A of the Act in the case of the assessee or any other person; or
 - (II) survey carried out under section 133A of the Act; or
 - (III) information received under an agreement referred to in section 90 or 90A

(b) **Specified conditions [Explanation (a) to the section 245MA]:** Specified conditions" in relation to a person means a person who fulfils the following conditions:

- (i) He should **not** be a person,
- (A) in respect of whom an order of detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. **COFEPOSA**

Such order of detention should not have been revoked before the expiry of the time stipulated under the relevant provisions of such Act, either on the basis of report of Advisory Board or review under the relevant provisions of that Act. Further, such order of detention should not have been set aside by a court of competent jurisdiction.

The proviso to clause (a)(I)(A) of Explanation to section 245MA reads as follows -

- (i) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board; or
- (ii) such order of detention being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under section 9(3), or on the report of the Advisory Board under section 8, read with section 9(2), of the said Act; or
- (iii) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of the said section, or on the basis of the report of the Advisory Board under section 8, read with section 12A(6), of the said Act; or
- (iv) such order of detention should not have been set aside by a court of competent jurisdiction;

Note - Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 provides for preventive detention in certain cases for the purposes of conservation and augmentation of foreign exchange and prevention of smuggling activities and for matters connected therewith. Under this Act, the Central and State Government are empowered to detain a person (including a foreigner) to prevent such a person from smuggling of goods or acting in a manner prejudicial to conservation of foreign exchange.

- (B) in respect of whom prosecution for any offence punishable under the provisions of the Indian Penal Code (***Bharatiya Nyaya Sanhita, 2023***), the Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prohibition of Benami Transactions Act, 1988, the Prevention of Corruption Act, 1988 or the Prevention of Money-laundering Act, 2002 has been instituted and he has been convicted of any offence punishable under any of those Acts;
- (C) in respect of whom prosecution has been initiated by an income-tax authority for any offence punishable under the provisions of this Act or the Indian Penal Code (***Bharatiya Nyaya Sanhita, 2023***) or for the purpose of enforcement of any civil liability under any law for the time being in force, or such person has been convicted of any such offence consequent upon the prosecution initiated by an income-tax authority;
- (D) who is notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992;

Prosecution under other Acts

- (ii) He should fulfill such other conditions, as may be prescribed.

Rule 44DAD(iii) provides that the “**specified conditions**” in relation to a person who opts for dispute resolution under section 245MA, means a person in respect of whom:

- (A) the conditions mentioned in (b) above are satisfied.
- (B) **proceedings** under the **Black Money** (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 have **not** been **initiated** for the **assessment year for which resolution of dispute is sought**.

- (c) **Specified Person:** Rule 44DAD(iv) provides that the specified person is a person who fulfils the specified conditions

(III) **Time limit for filing application** - Such application has to be filed –

	Case	Time limit
(i)	In cases where appeal has already been filed and is pending before the Commissioner (Appeals)	within such time from the date of constitution of the Dispute Resolution Committee, as may be specified by the Board
(ii)	in any other case	within one month from the date of receipt of specified order

(IV) **Screening of application by DRC**

- (i) **Examination of application** - The DRC has to examine the application with respect to the specified conditions and criteria for specified order. Upon such examination, where the DRC considers that the application for dispute resolution should be rejected, it has to serve a notice calling upon the assessee to show cause as to why his application should not be rejected, specifying a date and time for filing a response.
- (ii) **Provision of opportunity of being heard** - The assessee can request for an opportunity of being heard. If the DRC receives a request from the assessee, it has to provide him an opportunity of being heard through video telephony or video conferencing facility, to the extent technologically feasible.
- (iii) **Furnishing response to show cause notice within the specified date** - The assessee has to furnish a response to the show-cause notice referred to in (i) above within the specified date and time or such extended time as may be allowed on the basis of application made in this behalf, to the DRC;
- (iv) **Rejection of application by DRC** - The DRC may, after considering the response furnished by the assessee, reject the application or proceed to decide the application on merits in accordance with the procedure laid out in (V) and (VI) hereinafter. Where no such response is furnished by the assessee, the DRC may reject the application.

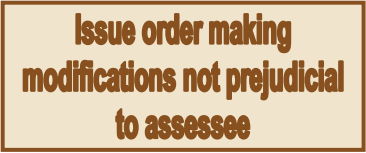
Serve SCN before rejection

Note - In such a case, the assessee may file an appeal to the Commissioner (Appeals). The period taken by the DRC in deciding on the admission has to be excluded from the period available to file such appeal.

- (v) **Communication of decision of DRC to assessee** - The decision of the DRC that the application for dispute resolution should be allowed to be proceeded with or rejected, has to be communicated to the assessee on his registered e-mail address;
- (vi) **Submission of proof of withdrawal of appeal/application before DRP** - Within 30 days of receipt of the communication that the application is admitted, the assessee is required to submit a proof of withdrawal of appeal filed under section 246A or withdrawal of application before the Dispute Resolution panel, if any, to the DRC or convey that there is no aforesaid proceeding pending in his case. If the assessee fails to do so, the DRC may reject the application.

(V) Procedure to be followed by the DRC

- (i) **Calling for records for further examination** - Upon admission of the application and subsequent to the receipt of the response of the assessee, the DRC may call for records from the income-tax authority and further examine, as it may deem fit, with respect to the issues covered in the application;

- (ii) **Seeking report from Assessing Officer** - The DRC may seek a report from the Assessing Officer on the issues covered in the application or on any other issue arising during the course of proceedings;
- (iii) **Calling for further information** - The DRC may before disposing off the application, call for further information from the assessee or any other person by sending an email to his registered email address;
- (iv) **Submission of response within specified time** - The assessee has to electronically submit its response to the DRC, within the time specified or such time as may be extended by the DRC on the basis of an application in this behalf;
- (v) **Decision of DRC** - After considering the material available on record, including any further information or evidence received from the assessee, income-tax authority or any other person, the DRC may decide —


- (a) to **make modifications to the variations in specified order**, which are not prejudicial to the interest of the assessee, and decide for waiver of penalty and immunity from prosecution in accordance with the provisions of Rule 44DAC, and pass an order of resolution, accordingly; or
- (b) to **not make modifications to the variations in the specified order**. However, the DRC may decide to waive penalty and grant immunity from prosecution provisions in accordance with the provisions of Rule 44DAC and pass an order of resolution accordingly. Such an order will be treated as an order not prejudicial to the interest of the assessee; or
- (c) to **not make any modification to the specified order and pass an order disposing off the application**. Such an order will be treated as an order 'not prejudicial to the interest of the assessee',

within six months from the end of the month in which application for dispute resolution is admitted by the DRC. The order of the DRC for the resolution of a dispute has to be in accordance with the provisions of the Act.

Issue order within 6 months from the end of month in which application admitted

- (vi) **Serving copy of order to AO and assessee** - The DRC has to serve a copy of the order of resolution or order disposing off the application, as the case may be, upon the assessee and also the Assessing Officer for giving effect to the same, if so required;
- (vii) **No appeal or reference will lie against the modified order** - Where the specified order is an order of the eligible assessee as referred to in section 144C(1), the assessee will not be eligible to file any reference to the DRP or an appeal to the Commissioner (Appeals) against the modified order.
- (viii) **Serving copy of modified order to assessee** - The Assessing Officer has to serve a copy of the modified order along with notice of demand upon the assessee specifying a date for making payment of demand. No appeal or revision would lie against the modified order.

**AO to serve modified order +
Notice of demand to assessee**

- (ix) **Assessee to furnish proof of payment of demand** -The assessee has to furnish proof of payment of the said demand to the DRC and also to the Assessing Officer.
 - (x) **Grant of immunity from prosecution and waiver of penalty** – The DRC shall, on receipt of **confirmation** of payment of demand, by an order in writing, grant immunity from prosecution and waiver of penalty if applicable, in accordance with the provisions of rule 44DAC [discussed later on in this chapter].
- (VI) **Termination of dispute resolution proceedings:** The DRC may, at any stage of the dispute resolution proceedings, if considered necessary, for reasons to be recorded in writing and after giving an opportunity of being heard to the assessee, decide to terminate the dispute resolution proceedings if, -
- (i) the assessee fails to cooperate during the course of dispute resolution proceedings; or
 - (ii) the assessee fails to respond to, or submit any information in response to, a notice issued to him; or
 - (iii) the Committee is satisfied that the assessee has concealed any particular material to the proceedings or had given false evidence.
 - (iv) the assessee fails to pay the demand as required in notice of demand.

Where the dispute resolution proceedings are terminated, the DRC has to intimate the income-tax authority for taking necessary action as per the provisions of the Act.

- (2) **Powers to reduce or waive any penalty imposable under this Act or grant immunity from prosecution [Section 245MA(2)]:** The Dispute Resolution Committee, subject to such conditions, as may be prescribed, shall have the powers to reduce or waive any penalty imposable under the Income-tax Act, 1961 or grant immunity from prosecution for any offence punishable under the Act in case of a person whose dispute is resolved under Chapter XIX-AA. Accordingly, Rule 44DAC prescribes the following:

- (i) **Conditions for grant of waiver of penalty or immunity from prosecution** - The DRC, upon receipt of confirmation from the assessee of payment of demand, should grant to the person who made the application for dispute resolution under section 245MA, waiver of penalty imposable or immunity from prosecution or both, in respect of the order which is the subject matter of resolution, if it is satisfied that such person has,

Paid full tax + co-operated with DRC

- **paid the tax due on the returned income in full** if available; and
 - **co-operated with the DRC** in the proceedings before it.
- (ii) **Reasons to be recorded in writing** - The DRC would grant such waiver of penalty or immunity from prosecution or both, subject to such conditions as it may think fit to impose for the reasons to be recorded in writing.
- (iii) **No immunity if prosecution proceedings were initiated before application** - No immunity would, however, be granted by the DRC in a case where the proceedings for the prosecution for an offence have been initiated before the date of receipt of the application for dispute resolution from the assessee fulfilling the specified conditions.
- (iv) **Withdrawal of immunity** - An immunity granted to a person would stand withdrawn, if such person fails to comply with any of the conditions subject to which the immunity was granted. On such withdrawal, the provisions of the Income-tax Act, 1961 would apply as if such immunity or waiver had never been granted.
- (3) **Time limit for passing an order by Assessing Officer in conformity with directions issued by the DRC [Section 245MA(2A)]**: Upon receipt of the order of the Dispute Resolution Committee under this section, the Assessing Officer shall:
- (a) in a case where the specified order is a draft of the proposed order of assessment under section 144C(1), pass an order of assessment, reassessment or recomputation or
- (b) in any other case, modify the order of assessment, reassessment or recomputation, in conformity with the directions contained in the order of the DRC within a **period of one month from the end of the month** in which such order is received.

Within 1 month from the end of month in which DRC order received

An eligible assessee (being any person in whose case variation arises as a consequence of order of Transfer Pricing Officer and any non-resident or a foreign company) may opt for approaching either the Dispute Resolution Panel under section 144C or the DRC under section 245MA. Accordingly, the Assessing Officer shall pass the final order in conformity with the order by the DRC within a period of one month from the end of the month in which such order is received.

- (4) **Faceless Scheme for Dispute Resolution:** The Central Government may make a scheme, by notification¹ in the Official Gazette, for the purposes of dispute resolution under this Chapter, so as to impart greater efficiency, transparency and accountability by -
- (a) eliminating the interface between the Dispute Resolution Committee and the assessee in the course of dispute resolution proceedings to the extent technologically feasible;
 - (b) optimising utilisation of the resources through economies of scale and functional specialization;
 - (c) introducing a dispute resolution system with dynamic jurisdiction.

¹ Accordingly, e-Dispute Resolution Scheme, 2022 was notified vide Notification No. 27/2022, dated 5.4.2022

TEST YOUR KNOWLEDGE

Questions

1. *What is the need for constitution of Dispute Resolution Committee (DRC)? Can an assessee make an application before DRC against an order which is based on information received under an agreement referred to in section 90 or section 90A?*
2. *Can an assessee opt for dispute resolution before DRC if prosecution for any offence punishable under the provisions of the Indian Penal Code has been instituted against him and he has been convicted in respect of the same under the said Act?*
3. *Mr. Vijay furnished his return of income for A.Y.2025-26 declaring total income of ₹ 28,00,000. He received an assessment order under section 143(3) on 26.11.2026 enhancing the total income for the A.Y.2025-26 by ₹ 5,00,000. He is aggrieved by the said order and is desirous of knowing whether he can file an application before the Dispute Resolution Committee (DRC). He informs you that no order of detention has been made and no prosecution proceedings have been initiated or instituted against him under any law for the time being in force. However, penalty under section 271D has been levied on him for failure to comply with the provisions of section 269SS.*

Can Mr. Vijay file an application before the DRC?

- (i) *If yes, what is the time limit for making an application to DRC against such order under the Income-tax Act, 1961. He is also keen to know, whether, in case he is aggrieved by the order passed by the DRC, can he file appeal against such order of DRC?*
- (ii) *Would your answer be different, if assessment order is based on information received under a DTAA with Country X?*

Answers

1. In order to provide early tax certainty to small and medium taxpayers, Dispute Resolution has been formulated for constitution of one or more Dispute Resolution Committee(s) (DRC).

Specified order *inter alia* does not include an order which is based on information received under an agreement referred to in section 90 or section 90A. Thus, an assessee can not opt for dispute resolution before DRC in respect of an order which is based on information received under an agreement referred to in section 90 or section 90A.

2. Dispute Resolution Committee would resolve dispute in the case of such persons or class of persons, as may be specified by the Board, who may opt for dispute resolution under this Chapter in respect of dispute arising from any variation in the specified order in his case and who fulfils the specified conditions.

Specified conditions include the condition that the person should not be a person in respect of whom prosecution for any offence punishable under the provisions of the Indian Penal Code has been instituted and he has been convicted of any offence punishable under the said Act.

Thus, a person in respect of whom any prosecution has been instituted and who is convicted of any offence punishable under the Indian Penal Code, cannot opt for resolution of dispute in respect of specified order before DRC.

3. Dispute Resolution Committee (DRC) would resolve dispute in the case of a person who opts for dispute resolution under Chapter XIX-AA in respect of dispute arising from any variation in the specified order in his case and who fulfils the specified conditions. Specified order includes an assessment order passed under section 143(3), where the aggregate sum of variations made *vide* such order does not exceed ₹ 10 lakh; the total income as per such return furnished by the assessee for the assessment year relevant to such order does not exceed ₹ 50 lakhs and such order is not based on search or requisition or survey or any information received under a DTAA.

Accordingly, in the present case, Mr. Vijay can file an application before DRC, since the assessment order received on 26.11.2026 is a specified order and he satisfies the specified conditions on account of no order of detention being made and no prosecution proceedings being initiated or instituted against him. Non-levy of penalty under income-tax law is not a specified condition, therefore, the levy of penalty under section 271D on him does not result in non-compliance with the specified condition. Mr. Vijay has to file an application for resolution of dispute in the prescribed form on or before 25.12.2026 i.e., within one month from the date of receipt of the specified order.

However, once a modified order is passed by the DRC, no appeal or revision would lie against such order.

If assessment order is based upon the information received under an DTAA entered with India, Mr. Vijay, will not be eligible to make an application before DRC, since it is not a specified order.

