

**POINTS FOR MEETING WITH THE PRINCIPLE CHIEF COMMISSIONER OF  
INCOME TAX, HELD ON 24<sup>TH</sup> JANUARY 2020**

**SECTION 115 BBE / SECTION 47 / SECTION 144**

Section 115 BBE of Income Tax Act amended on 15.12.2016 with retrospective effect from 01.04.2016 is causing genuine hardships to taxpayers.

The said provision was introduced for the purpose of penalizing tax evaders, which attracts very high tax rate of 60% and surcharge, cess thereon. As the provisions suggests, if an assessee has not disclosed his income properly and also if source of his income is not established, in such cases, income are to be taxed under section 68, 69 and 69A to 69D of the Income Tax Act. We understand that these sections must be invoked only in the rarest cases, after through scrutiny and proper investigation by the assessing officers.

But now a days, it has been witnessed that assessing officers in most of the cases, pass assessment order under these sections, which results in high pitch assessments. Recently huge numbers of assessment orders were passed invoking provisions of abovementioned sections which resulted in disputed tax demand of approx. Rs. 300 crores in the state alone.

These demands have been raised after making addition of SBN as well as non-SBN currencies deposited during the demonetization period. Additions have also been made in cases of exempted category of tax payers also such as Petrol pumps, Medicine shops, Mobile recharge coupons who were authorized to accept SBN during demonetization period by various orders issued by the Government and RBI. In few cases, additions have been made on the entire cash deposits during the year. Most of the cases have been assessed u/s 144 of the Income Tax Act, accordingly many small assesses received orders of huge tax demands and they do not have sufficient funds to pay even 20% of this demand and now afraid of probable coercive actions by the Income Tax Officials.

We are afraid that any coercive action for recovery of demand will adversely affect the business and therefore we request you not to press for the tax demand and stay it till disposal of the first appeal.

**ASSESSMENTS IN CASE OF JOINT DEVELOPMENT AGREEMENT**

There are several cases of disputed tax demand in case of Joint Development Agreements entered between land owners and Developers. We all know that development of any real estate project takes long time and share of land owners are handed over after the completion of project. Therefore. Land owner can generate the revenue at the time of sales of handed over properties after completion of the project generally. Earlier, under the provisions of income tax act, one

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interpretation suggested payment of tax liability in such cases, in the year of signing of development agreement, but it was difficult for land owners to pay his tax liability due to non availability of funds. This genuine hardship due to possible misinterpretation was also felt by the legislatures and accordingly section 45(5A) of the Income Tax was inserted with effect from 01/04/2018 clarifying that in such cases liability to tax will arise in the year in which the land owner gets his share in the property and not in the year of execution of Development Agreement.

In spite of this curative amendment of the act by the legislature, department raised demand in many such cases. We suggest that a lenient view must be taken by your good office in all genuine cases and no coercive action should be taken for recovery of tax demand.

### **ENQUIRY SHOULD BE LIMITED IN CASE OF LIMITED SCRUTINY**

It has been seen that in cases of limited scrutiny, a detailed questionnaire is asked to reply by the AO and scope of examination do not remain confine to the ground of scrutiny.

It's suggested that limited scrutiny should be dealt only to the specific points on the basis of which the particular return has been selected for scrutiny and should be enlarged the area of examination under CBDT guideline only.

### **CPC RELATED ISSUES:**

It has been seen that these days, CPC is taking up small old demands of long old period into follow up action without looking other things, which might have taken place in between the period.

It's suggested that small demands should be taken up only after ensuring that same is due to be paid and may be dropped.

### **PENDING REFUNDS:**

The current refund process is quite appreciable but it has been brought into our knowledge by some of our members that the old refunds of previous years, even of quite long old periods are yet pending .

It's suggested to make the refund procedure online even for the old cases. The applicant should file an application to issue refund order along with the copy of assessment order and bank details through portal to get their refund.

## **LAW RELATED ISSUES**

### **SIMPLIFICATION OF TDS / TCS PROVISION**

In past few years, it has been the government aim to bring more & more transactions under ambit of TDS/ TCS to minimize evasion of taxes.

Tax deducted is to be paid on monthly basis while return is to be filed on quarterly basis. In the event of delay in making payment by the due date, interest @1.5% per month and Late fees of Rs.200 per day for delay in filing return is levied.

In this connection, we wish to suggest as under:-

- **Delay Interest:**

The provision of delay Interest @1.5% per month even for a single day delay is not all justified. Further, a single day delay in making payment attract interest for two months i.e. 3%, which is not reasonable.. The due date to pay TDS for any month is 7<sup>th</sup> of the next month, which is not a much long time and the deductormay missed to pay and in such scenario, it's painful to pay 3% interest.

It's requested to look upon to make it more practical and reasonable.

- **Frequency of return and its software**

TDS return is to be filed on quarterly basis, which increases a lot of task to the stakeholders while the credit of such deduction is to be availed at the time of filing annual income tax return.

The government provided software is also not friendly to use and so most of the returns are filed through private software. The procedure of filing is also quite complex. Presently, there is so much hardship that even to download the TDS certificate, timeline has been framed out.

It is suggested to change the frequency of TDS return on half yearly basis / annual basis ( payment should be continued on monthly basis) to reduce the task of the stakeholders. The TDS return software & procedure should also be simplified so that the small taxpayers could file their return at their own.

### **DISALLOWANCE U/S 36(1)(VA)**

It is seen that while processing the return, tax demand is raised on account of additions on account of delay deposit of ESI/EPF etc, after due dates fixed under respective statutes but before due date of filing of Income Tax Returns. Therefore, we suggest, that before making any disallowance on this ground, a proper opportunity of being heard/submit explanation must be given to the tax payers.

### **DISALLOWANCE U/S 43B**

As per section 43B, some expenses like contribution to any provident fund, Interest on loan, Taxes etc are not allowed if not paid in the financial year as well as not paid before due date of filing income tax return. The said amount is allowed in the year in which actually the same is paid.

It's suggested to allow the same if paid before the filing of the annual return and not due date of return.

### **SECTION 56(2)(X) & 50C :**

As per the said provisions, stamp value exceeding 105% of the transaction value is being assessed for tax. In the present scenario, the government has increased the circle rate to its peak and many of the cases, it exceeds the transaction value or market value and both buyer and seller are liable to pay tax unnecessarily.

The provision need relaxation no addition should be made on the ground of difference upto minimum of 30%.

### **DISPUTE RESOLUTION SCHEME:**

In order to settle the old litigation cases pending at the various level involving huge amounts, alike OTS scheme Sabka Viswas Legacy Scheme announced in Indirect Taxes, it's suggested to bring OTS scheme in Direct Taxes.

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