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**CBDT enhances monetary limit for filing of appeals by the department and gives it retrospective effect**



Reference is invited to board's Instruction No. 5/2014, dated 10-7-2014, wherein monetary limits and other conditions for filing departmental appeals (in income tax matters) before Appellate Tribunal and High Courts and SLP before the Supreme Court

were specified. In supersession of the above instructions, it has been decided by the board that departmental appeal may be filed on merits before Appellate Tribunal and High Courts and SLP before the Supreme Court keeping in view the monetary limits and conditions specified below.

Henceforth, appeal/SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given here under: -

Before Appellate Tribunal	Rs. 10, 00,000/-
Before High Court	Rs. 20, 00,000/-
Before Supreme Court	Rs. 25, 00,000/-

It is clarified that an appeal should not be filed merely because the tax effect in case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided on merits.

“Tax effect” means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as “disputed issues”). Tax will not include any interest thereon, except where chargeability of interest itself is in dispute.

The monetary limits specified above shall not apply to writ matters and direct tax matters other than income tax. Filing of appeals in other direct tax matters shall continue to be governed by relevant provisions of statute & rules. Further, filing of appeal in cases of income tax, where tax effect is not quantifiable or not involved, such as the case of registration of trusts or institution under section 12A of the income tax act, 1961, shall not be governed by the monetary limits specified above and decision to file appeal in such cases may be taken on merits of a particular case. This instruction will apply retrospectively to pending appeals and appeals to be filed henceforth in High Courts/Tribunals. Pending appeals below the monetary limit specified above may be withdrawn/not pressed. Appeals before the Supreme Court will be governed by the instructions on this subject, operative at the time when such appeal was filed.

**Source: Circular No.21/2015[F.No. 279/MISC.142/2007-ITJ (PT.)] dated 10.12.2015**

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**Defective (return) notices issued to FII/FPis**



Notices of defective returns were issued under section 139(9) of the income tax act to Foreign Institutional Investors/Foreign Portfolio Investors (FIIs/FPis) in cases where balance sheet and profit & loss account were not filled. In order to overcome this problem, it is clarified that

such returns will not be treated as defective in cases where FII/FPis:

- (a) is registered with SEBI

- (b) has no Permanent Establishment/place of business in India
- (c) has provided basic information required under section 139(9) (f) of the income tax act, if there is business income.

All such cases, where the SEBI registrations number has been provided by the FII/FPIs in the returns for the AY 2015-16 are being taken up for processing at CPC Bengaluru. For previous assessment years where the above information is not available in the income tax return, FII/FPI may provide such details in their online response on the e-filing portal of the income tax department ([www.incometaxefiling.gov.in](http://www.incometaxefiling.gov.in)) to the previously issued notice u/s 139(9) of the income tax act.

**Source: CBDT, press release dated 10-12-2015**

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#### **Extension of last date for December 2015 installment of advance tax for taxpayers in Tamil Nadu and Puducherry**

The last date of payment of December 2015 installment of advance tax for both corporate and non-corporate taxpayers in the State of Tamil Nadu and Union territory of Puducherry has been extended from 15.12.2015 to 31.12.2015 in view of unprecedented rainfall and floods in these areas.

**Source: CBDT, press release dated 15-12-2015**

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#### **Consequences for non-payment or late payment of TDS**



In Recent past we noticed that department has taken late payment of TDS very seriously and in addition to imposing interest and Penalty for Late Payment, they also start initiating Criminal Prosecution against those responsible for Deduction and Payment of TDS. Recently and MD of a Hyderabad based company been jailed for TDS payment defaults - Company's MD Sentenced 3 months' rigorous imprisonment for TDS default.

**Source: Taxguru.in, article , dated 15-12-2015**

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#### **Supreme Court upholds HC order, interest on share application not taxable in pre allotment period**

##### **Facts of the case**

Henkel Spic India Ltd. ('assessee') opened a public issue of shares on January 29, 1992 and the date of closure of this issue was February 3, 1992. Proceeds which were received from the applicants to the share capital were deposited in the Bank by the assessee for 46 days as per the requirement under law. The shares were allotted in June, 1992 and those applicants who were not allotted the shares, their application money was refunded along with interest. The assessee earned interest on the above application amount deposited in bank. The assessing officer wants to tax the aforesaid interest income in AY 1992-1993 as the money was received



between 29.01.1992 and 03.02.1992 and the interest earned thereupon in the said financial year.

#### ***Ruling of the High Court***

The High Court ruled in favour of the assessee by contending that as per section 73 of the Companies Act assessee was required to keep the application money in a separate Bank account in a trust and that “No part of this fund, either principal or interest accrued thereon, can be utilized by the company until the allotment process is completed”. HC had thus accepted assessee’s stand that interest accrued to assessee only on allotment of shares since before that amount was kept in trust belonging to the applicants and therefore this income accrued only in AY 1993-1994.

#### ***Ruling of the Supreme Court:***



Upholding HC order, SC holds that “*We, do not find any error in the order passed by the High Court holding that the interest income has accrued only in AY 1993-1994 and was taxable in that year only and not in AY 1992-1993*”

***Source: M/s Henkel Spic India Ltd Vs Commissioner of Income Tax  
Supreme Court of India, TS-707-SC-2015.***

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#### **CBDT relaxes rules regarding furnishing of information in respect of payments made to non-resident**

For detailed explanation, see our newsflash volume no. 13 dated 19-12-2015

***Source: CBDT, Notification No. 93/2015, F.No. 133/41/2015-TPL***

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#### **CBDT: Prescribes ‘forms’ u/s 115UB enabling investment funds to avail ‘Pass-through’ status**

CBDT notifies new Forms 64C/64D to be furnished by an investment fund u/s 115UB(7) in order to avail ‘pass through’ status, inserts new Rule 12CB; Sec115UB was inserted vide Finance Act, 2015 providing that with respect to any income accruing/arising to unit holders of investment fund, it shall be assumed that investments were made directly by unit holders and hence will be chargeable to tax in the same manner as that of the fund; New Form 64C provides for statement of income distributed by an investment fund to be furnished to unit holder by 30th June of financial year following the year in which income was paid/credited; Further, new Form 64D provides for statement of income paid or credited by investment fund to be furnished to prescribed income tax authority i.e. Pr.CIT/CIT within whose jurisdiction the Principal office of investment fund is situated, by 30th November of financial year following the year in which income was paid/credited; While Form 64C seeks details of income arising to unit holder along with general information about investment fund, Form 64D seeks detailed information about investment fund including its income and loss set-off details.

***Source: CBDT notification no. 92/2015 dated 11-12-2015***

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**CBDT clarifies about allowability of employer’s contribution to fund for the welfare of employees in terms of section 43B (b) of the Income Tax Act**

CBDT clarifies that no Sec 43B disallowance for employer’s contribution to various employees welfare funds like PF, gratuity made beyond 'due date' as per relevant Acts but before return filing due-date u/s 139(1); CBDT acknowledges that the issue is well settled in light of SC ruling in Alom Extrusions wherein it was held that amendments made to Sec 43B by Finance Act 2003 were curative in nature and were applicable retrospectively from April 1, 1988; By way of these amendments, second proviso to Sec 43B was deleted and first proviso was amended to the effect that assessee would be entitled to deduction on contribution made on labour welfare funds, if such contribution was made before filing return of income; Accordingly, directs that no appeals may henceforth be filed on this ground by the Department and appeals already filed, if any, on this ground before Courts/Tribunals may be withdrawn/ not pressed upon.

It is also clarified by the CBDT that this circular does not apply to claim of deduction relating to employee’s contribution to welfare funds which are governed by section 36(1) (va) of the Income Tax Act.

**Source: CBDT circular no. 22/2015 dated 17-12-2015.**

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**An Adjustment with respect to transfer pricing has to be confined to transactions with Associated Enterprises and cannot be made with respect to transactions with unrelated third parties**

**Facts of the case**



The assessee is in the business of execution of turnkey contracts involving design, manufacture, supply, erection and commissioning of sugar plants, cement plants, etc. During the subject Assessment Year, the assessee entered into international transactions with its Associated Enterprises (AE), as

well as transactions with independent parties. The TPO proposed an addition on account of enhancement of profit margin on all transactions of the assessee. Aggrieved by the order, assessee filed an appeal with ITAT. The tribunal held that only transactions entered into by an assessee with its AE are subject to transfer pricing adjustment and not otherwise. Thus, allowing the assessee's appeal before it. Aggrieved by the order, the revenue filed an appeal with High Court.

**Ruling of the High Court**

The High Court dismisses revenue appeal by contending that as per Chapter X of the Act, redetermination of the consideration is to be done only with regard to income arising from International Transactions on determination of ALP. The adjustment which is mandated is only in respect of International Transaction and not transactions entered into by assessee with independent unrelated third parties, therefore this adjustment is beyond the scope and ambit of Chapter X of the Act.

**Source: CIT vs M/s Thyssen Krupp Industries Private Ltd**

**Bombay High Court, Appeal no. 2201 of 2013, dated 02-12-2015**

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### Electronic filing of appeal before CIT (Appeals)



It is the endeavor of the Income Tax Department to digitize various functions of the department for providing efficient taxpayer services. As another significant step in this direction, electronic filing of appeal before CIT (Appeals) is being made mandatory for persons who are required to file the return of income electronically. Electronic filing of appeal along with the documents relied upon before CIT (Appeals) will remove human interface, reduce paperwork and decrease the transaction cost for the taxpayer. It would ensure consistent and error free service as validations will be inbuilt resulting in fewer deficient appeals. Online filing will also facilitate fixation of hearing of appeals electronically. The existing Form 35 for filing of first appeal is being substituted by a new Form. The new format for filing of appeals is more structured, objective, systematic, and aligned with the current provisions of the Income-tax Act. With these changes, the burden of compliance on the taxpayers in appellate proceedings will be significantly reduced.

**Source: CBDT, Press Release dated 30-12-2015**

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### CBDT clarifies important issues on scope of scrutiny in CASS assessments

The CBDT has issued Instruction No. 20/2015 dated 29.12.2015 in which it has issued clarifications on several issues in order to facilitate the conduct of scrutiny assessments in cases selected through Computer Aided Scrutiny Selection ('CASS'). The clarifications are as under:

- (a) Year of applicability: As stated in instruction no. 7/2014, the said instruction is applicable only in respect of the cases selected for scrutiny through CASS 2014.
- (b) Whether the said Instruction is applicable to all cases selected under CASS: The said Instruction is applicable where the case is selected for scrutiny under CASS only on the parameter(s) of AIR/CIB/26AS data. If a case has been selected under CASS for any other reason(s)/parameter (s) besides the AIR /CIB/26AS data, then the said Instruction would not apply.
- (c) Scope of Enquiry: Specific issue based enquiry is to be conducted only in those scrutiny cases which have been selected on the parameter (s) of AIR/CIB/26AS data. In such cases, the Assessing Officer, shall also confine the Questionnaire only to the specific issues pertaining to AIR/CIB/26AS data. Wider scrutiny in these cases can only be conducted as per the guidelines and procedures stated in Instruction No. 7/2014.
- (d) Reason for selection: In cases under scrutiny for verification of AIR/CIB/26AS data, the Assessing Officer has to intimate the reason for selection of case for scrutiny to the assessee concerned.

The CBDT has also stated that as far as the returns selected for scrutiny through CASS-2015 are concerned, two type of cases have been selected for scrutiny in the current Financial Year – one is 'Limited Scrutiny' and other is Complete Scrutiny'. The assessee concerned have duly been intimated about their cases falling either in 'Limited Scrutiny' or 'Complete Scrutiny' through notices issued under section 143(2) of the Income-tax Act, 1961 ('Act'). The procedure for handling 'Limited Scrutiny' cases shall be as under:

(a) In 'Limited Scrutiny ' cases, the reasons/issues shall be forthwith communicated to the assessee concerned.



(b) The Questionnaire under section 142(1) of the Act in 'Limited Scrutiny ' cases shall remain confined only to the specific reasons/issues for which case has been picked up for scrutiny.

Further, the scope of enquiry shall be restricted to the 'Limited Scrutiny 'issues.

(c) These cases shall be completed expeditiously in a limited number of hearings.

(d) During the course of assessment proceedings in ' Limited Scrutiny ' cases, if it comes to the notice of the Assessing Officer that there is potential escapement of income exceeding Rs. five lakhs (for metro charges, the monetary limit shall be Rs. ten lakhs) requiring substantial verification on any other issue(s), then, the case may be taken up for 'Complete Scrutiny ' with the approval of the Pr. CIT/CIT concerned in writing after being satisfied about the merits of the issue(s). Such cases shall be monitored by the Range Head concerned. The procedure indicated at points (a), (b) and (c) above shall no longer remain binding in such cases. (For the present purpose, 'Metro charges' would mean Delhi, Mumbai, Chennai, Kolkata, Bengaluru, Hyderabad and Ahmedabad).

(e) The Board further desires that in all cases under scrutiny, where the Assessing Officer proposes to make additions or disallowances, the assessee would be given a fair opportunity to explain his position on the proposed additions/disallowances in accordance with the principle of natural justice and shall issue an appropriate show-cause notice indicating the reason therein.

(f) The contents of this Instruction should be immediately brought to the notice of all concerned for strict compliance.

**Source: CBDT Instruction no. 20/2015 dated 29-12-2015**

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### **Assessing officer should grant stay in high pitch assessment considering old Instruction of CBDT**

#### **Facts of the case**



The assessee is an individual, filed his income tax return for the assessment year 2012-2013, wherein total income was furnished at Rs. 4,91,680/- and agriculture income to the tune of Rs. 45,00,000/- .

Notice u/s 143(2) dated 14-08-2013 and section 142(1) dated 14-07-2014 were issued by the assessing officer under CASS. The AO rejected the claim of agriculture income and determined the income at Rs. 59, 91,680/- and treating the same as regular income from undisclosed income. Aggrieved by the order, the assessee filed an appeal under section 246A of the income tax act on 22-04-2015 and the same is still pending. Petition under section 220(3) and 220(6) was filed by the assessee on 29-04-2015 before the AO seeking stay of recovery of demand. Further, order was passed under section 220 directing assessee to pay 50% of demand. Aggrieved over the same, the assessee filed writ petition in High court of Madras.

### ***Ruling of the Court***

Assessee was of the view that it was a case of high pitch assessment since the assessed income was 14 times higher than returned income. Accordingly, assessee contended that he was entitled for stay of recovery of the demand, in view of the pendency of the appeal by placing reliance on CBDT's Instruction No.95 dated 21.08.1969. However, revenue contends that Instruction No. 95 was superseded by Instruction No. 1914; dated 2-12-1993. The court held that *"if assessment order is unreasonably high pitched or genuine hardship is likely to be caused to the assessee, then the assessee is entitled to be treated as not being in default in respect of the amount in dispute in the appeal. Since it was a clear case of high pitched assessment, therefore in view of CBDT's Instruction No. 95, assessee could not be treated in default and therefore absolute stay should be granted"*. Therefore, in view of the above reasons, the writ petition filed by the assessee is allowed and accordingly High Court has set aside the order passed by the AO and directed the AO to consider the petition filed by the assessee under section 220(3) and 220(6) of the income tax act, in conformity with CBDT instruction no. 95, by providing an opportunity of being heard to the assessee and pass order in accordance with law.

***Source: DCIT Vs N. Jegatheesan,***

***High Court of Madras, [2015] 64 taxmann.com 339 (Madras)***

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