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Assessee need not establish that debt is irrecoverable to claim deduction of bad- debts: CBDT



The Hon'ble Supreme Court in the case of TRF Ltd. In CA Nos. 5292 to 5294 of 2003 vide judgement dated 9.02.2010 has stated that the position of law is well settled "After 1.4.1989, for allowing deduction for the amount of any bad debt or part thereof under section 36(1)(vii) of the Act, it is not necessary for assessee to establish that the bad debt, in fact has become irrecoverable, it is enough if bad debt is written off as irrecoverable in the books of accounts of assessee".

In view of the above CBDT clarified that claim for any debt or part thereof in any previous year, shall be admissible under section 36(1)(vii) of the Act, if it is written off as irrecoverable in the books of accounts of the assessee for that previous year and it fulfills the conditions stipulated in sub section (2) of sub section 36(2) of the act.

Source: CBDT CIRCULAR NO.12/2016 [F.NO.279/Misc/140/2015-ITJ], DATED 30-5-2016.

No cancellation of trust registration when its commercial receipts exceeds prescribed limit: CBDT

Sections 11 and 12 of the Income-tax Act, 1961 ('Act') exempt income of charitable trusts or institutions, if such income is applied for charitable purpose and such institution is registered under section 12AA of the Act.

Further, it is clarified by the CBDT that it shall not be mandatory to cancel the registration already granted u/s 12AA to a charitable institution merely on the ground that the cut-off specified in the proviso to section 2(15) of the Act is exceeded in a particular year without there being any change in the nature of activities of the institution. If in any particular year, the specified cut-off is exceeded, the tax exemption would be denied to the institution in that year and cancellation of registration would not be mandatory unless such cancellation becomes necessary on the ground(s) prescribed under the Act.



With the introduction of Chapter XII-EB in the Act vide Finance Act, 2016, prescribing special provisions relating to tax on accreted income of certain trusts and institutions, cancellation of registration granted u/s 12AA may lead to a charitable institution getting hit by sub-section (3) of section 115TD and becoming liable to tax on accreted income. The cancellation of registration without justifiable reasons may, therefore, cause additional hardship to an assessee institution due to attraction of tax-liability on accreted income. The field authorities are, therefore, advised not to cancel the registration of a charitable institution granted u/s 12AA just because the proviso to section 2(15) comes into play. The process for cancellation of registration is to be initiated strictly in accordance with section 12AA (3) and 12AA (4) after carefully examining the applicability of these provisions.

Source: CBDT CIRCULAR NO.21/2016 [F.NO.197/17/2016-ITA-I], DATED 27-05-2016

Time-limit for e-filing of appeals before CIT(A) extended to June 15, 2016



Rule 45 of the Income Tax Rules, 1962, mandates compulsory e-filing of appeals before CIT (Appeals) with effect from 1-3-2016 in respect of persons who are required to furnish return of income electronically. It has come to the notice of the CBDT (hereinafter referred to as the Board) that in some cases the taxpayers who were required to e-file Form 35, were unable to do so due to lack of knowledge about e-filing procedure and/or technical issues in e-filing and many more issues.

The matter has been examined by the Board. While the underlying issues relating to e-filing of appeals have since been addressed and resolved, in order to mitigate any inconvenience caused to the taxpayers on account of the new requirement of mandatory e-filing appeals, it has been decided to extend the time limit for filing of such e-appeals. E-appeals which were due to be filed by 15-5-2016 can be filed up to 15-6-2016. All e-appeals filed within this extended period would be treated as appeals filed in time. All the taxpayers who could not successfully e-file their appeal and had filed paper appeals are required to file an appeal in accordance with Rule 45 before the extended period i.e. 15-06-2016. They would be treated appeal filed in time.

Source: CIRCULAR NO.20/2016 [F.NO.279/MISC/M-54/2016/ITJ], DATED 26-5-2016

Amendment in TCS rates: Section 206C(1D) amended and Section 206C(1E) and (1F) inserted by Finance Act, 2016.



Section 206C(1D): Every person, being a seller, who receives any amount in cash as consideration for sale of bullion or jewellery or any other goods (other than bullion or jewellery) providing any service, shall, at the time of receipt of such amount in cash, collect from the buyer, a sum equal to 1% per cent of sale consideration as income tax, if such consideration –

- (i) For bullion, exceeds 2,00,000/- or
- (ii) For jewellery, exceeds 5,00,000/- or
- (iii) For any goods, other than those referred to in clause (i) and (ii), or any service, exceeds 2,00,000/-.

Provided that no tax shall be collected at source under this sub-section on any amount on which tax has been deducted by the payer under chapter XVIIIB.

Section 206C(1E) has been inserted by Finance Act, 2016 which provides that “Nothing contained in sub-section (1D) in relation to sale of any goods (other than bullion or jewellery) or providing any service shall apply to such class of buyers who fulfill such conditions, as may be prescribed”.

Section 206C(1F) has been inserted by Finance Act, 2016 which provides that “Every person, being a seller who receives any amount as consideration for sale of motor vehicle of the value exceeding INR 10,00,000, shall at the time of receipt of such amount, collect from the buyer, a sum equal to 1% of the sale consideration as income tax”.

Source: Finance Act, 2016

Obligation of a seller receiving consideration of more than Rs. 2 Lakh in Financial Year 2016-17

With effect from June 1, 2016, the seller/service provider is required to collect tax at source at the rate of 1 per cent of the total consideration, if the amount of (single) bill is more than Rs. 2 lakhs (In case of Jewellery Rs. 5 Lakh) and consideration (or any part of it) is received in cash. This rule is applicable regardless of the fact whether seller/service provider is subject to audit under section 44AB. Seller/service provider is required to take PAN of the purchaser/recipient of service with effect from January 1, 2016 (this is applicable whether payment is received in cash or by cheque or by any other mode). The person raising bill shall ensure after verification after verification If PAN is not available, a declaration in Form No. 60 should be taken from the purchaser/recipient of service. If the seller/service provider is required to get his account audited under section 44AB, then –

- a) Such person shall furnish a statement in Form No. 61 containing particulars of such declaration (i.e., declaration in Form No. 60) to the DIT/ Jt. DIT (Intelligence and Criminal Investigation) through online transmission of electronic data and obtain an acknowledgement number.

- b) Such a person is required to retain Form No. 60 for a period of 6 years from the end of the financial year in which the transaction is undertaken.

A statement of financial transactions (AIR) in Form No. 61A is to be submitted for transactions recorded on or after 1st April 2016. This rule is applicable only if the seller/service provider is required to get his account audited under section 44AB and such person receives for sale of goods/services to any person cash payment (in aggregate from one or more transactions during the financial year) exceeding Rs. 2 lakhs.

Source : Finance Act, 2016.

Domestic black money to be declared to jurisdictional principal CIT or CIT: CBDT clarifies



Income Declaration Scheme, 2016, introduced vide Finance Act, 2016 (28 of 2016), provides an opportunity to persons who have not paid full taxes in the past to come forward and declare their undisclosed income.

Rule 4 of the Income Declaration Scheme Rules, 2016 provides that a declaration of income or income in the form of investment in any asset under section 183 shall be made in the prescribed manner to the Principal Commissioner or the Commissioner who exercises jurisdiction over the declarant.

It is, therefore, clarified that the jurisdictional Principal Commissioner or the Commissioner, as the case may be, who exercises jurisdiction under section 120 of the Income-tax Act, 1961, as notified by CBDT from time to time over such declarant, shall be the Principal Commissioner or the Commissioner as referred to in section 186 of the Income Declaration Scheme 2016 to whom declaration under section 183 of that Scheme is to be made.

Source: CIRCULAR NO. 19/2016 [F.NO.187/10/2016.ITA.I], DATED 25-5-2016.

Govt. notifies relevant dates for black money hoarders to comply with requirements of Declaration Scheme

In exercise of the powers conferred by section 183, section 187 and section 190 of the Finance Act, 2016 (28 of 2016), the Central Government hereby appoints:

- i) the 30th day of September, 2016 as the date on or before which a person may make a declaration under sub-section (1) of section 183.
- ii) the 30th day of November, 2016 as the date on or before which the tax and surcharge is payable under section 184, and the penalty is payable under section 185 in respect of the undisclosed income.
- iii) the 30th day of September, 2017 as the date on or before which the benamidar shall transfer to the declarant, being the person who provides the consideration for such asset, or his legal representative.

Source: Notification No. 32/2016, F.No.142/8/2016-TPL, dated 19-05-2016

CBDT notifies committee for granting of approval to offshore investment fund under sec. 9A



In exercise of the powers conferred by sub-rule (4) of rule 10VA of the Income-tax Rules, 1962, read with section 9A of the Income-tax Act, 1961, the Central Board of Direct Taxes hereby notifies the following Committee for the purposes of the said sub-rule:

- i) Chief Commissioner of Income Tax (International Taxation), West Zone, Mumbai (Chairperson of Committee).
- ii) Commissioner of Income Tax (International Taxation)-1, Mumbai.
- iii) Commissioner of Income Tax (Transfer Pricing)-1 Mumbai.

Source: ORDER [F.NO. 173/237/2016-ITA-I], DATED 6-5-2016

CBDT has not revised due dates for filing of TCS returns

The CBDT vide Notification No. 30/2016 [F.NO.142/29/2015-TPL], Dated 29-4-2016 has revised the due dates for filing of quarterly TDS returns by persons (other than government).

However, there are some wrong notions of the taxpayers that the due dates for filing of TCS returns have also been extended by the CBDT. It is advisable that the TCS statement should be filed on or before the due date so to avoid late filing fee under Section 234E and penalty under section 271H.

Source: Taxmann.Com

CBDT prescribes procedure for e-filing of Form 15G/15H



As per sub-rule (3) of rule 29C, the person responsible for paying any income of the nature referred to in sub-section (1) or sub-section (1A) or sub-section (1C) of section 197A, shall allot a unique identification number to each declaration received by him in Form No.15G and Form No.15H respectively during every quarter of the financial year in accordance with the procedures, formats and standards specified by the Principal Director General of Income-tax (Systems) under sub-rule (7) of rule 29C. The procedure for the same is under:

- a) Registration: The deductor/collector is required to register by logging in to the e-filing website (<https://incometaxindiaefiling.gov.in/>) of the Income Tax Department and should hold a valid TAN. Path for the same is Register yourself → Tax Deductor & Collector
- b) Preparation: The prescribed schema for Form 15G/15H and utility to prepare XML file can be downloaded from the e-filing website home page under forms (other than ITR) tab. The Form 15G/15H utility can be used to prepare the xml zip file. The declaration is required to be submitted using a Digital Signature Certificate. The signature file for the zipped file can be generated using the DSC Management Utility (available under Downloads in the e-Filing website <https://incometaxindiaefiling.gov.in/>).

- c) Submission: The designated person is required to login to the e-filing website using TAN and go to e-File → Upload Form 15G/15H and then uploaded the Zip as explained in para (b) above. Once uploaded, the status of the statement shall be shown as "Uploaded". The uploaded file shall be processed and validated at the e-filing portal (list of validations are given in the user manual). Upon validation, the status shall be either "Accepted" or "Rejected" which will reflect within 24 hours from the time of upload. The status of uploaded file will be visible at My account → View Form 15G/15H. In case the submitted file is "Rejected", the reason for rejection shall be displayed and the corrected statement can be uploaded again.

Source: NOTIFICATION NO.7/2016 [F.NO.DGIT(S)/ADG(S)-2/TDS E-FILING NOTIFICATION/110/2016], DATED 4-5-2016.

Relaxation for furnishing of Unique Identification number in case of form 15G/15H for certain quarters

As per the existing provision of section 197A of the income tax act, tax shall not be deducted, if recipient of certain income on which tax is deductible furnishes to the payer a self-declaration in form 15G/15H in accordance with the rules prescribed under rule 29C of the Income Tax Rules, 1962.

The amended rule 29C which comes into effect from 01.10.2015, in addition to paper filing, also provides for online filing of self-declaration for non-deduction of tax u/s 197A of the Act. Sub-rule (3) of Rule 29C provides for allotment of

Unique Identification number to each declaration received in form 15G/15H by the deductor. Further, sub-rule (5) of Rule 29C provides that payer shall also furnish Unique Identification Number along with details of the transactions covered under form 15G/15H in quarterly TDS statements in accordance with the provisions of clause (vii) of sub-rule (4) of Rule 31A irrespective of the fact that no tax has been deducted in the said quarter.

Representations have been received that due to operational constraints, in Form 15G/15H and the details thereof could not be included in the quarterly statements for the quarter ending 31.12.2015 and 31.03.2016 respectively.

Taking into account the concern of the stakeholders, CBDT hereby relaxes the conditions of furnishing of Unique Identification Number allotted by the deductor for the quarter ending 31.12.2015 and 31.03.2016 in the quarterly statement of deduction of tax in accordance with sub-rule (5) of Rule 29C.

Source: CIRCULAR NO. 18/2016 [F.NO.142/32/2015-TPL], DATED 23-5-2016.

Opportunity to tax payers to regularize their pending income tax return pertaining to AY 2009-10 and AY 2014-15 pending for verification



Final opportunity has been given by the CBDT in exercise of power u/s 119(2)(a) of the income tax act, in case of returns for AY 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 which were uploaded electronically by the taxpayer within the time allowed u/s 139(1) of the act and which have remained incomplete due to non-

submission of ITR-V form for verification, hereby permits verification of such returns also through EVC. Such verification process must be completed by 31.08.2016. As an alternative to EVC, the taxpayer is allowed to send a duly signed copy of ITR-V to the CPC, by this date by speed post. In such cases, CBDT also relaxes the time frame for issuing the intimation as provided in second proviso to sub section (1) of the income tax act and direct that such returns shall be processed by 30.11.2016 and intimation of processing of such returns shall be sent to the taxpayer concerned as per the laid down procedure. In refund cases, while determining the interest, provision of section 244A (2) of the Act would apply.

In situations where the taxpayer concerned had submitted the ITR-V form after the permitted time which was earlier being treated as Non-est/declared Non-est and evidence of same is available with department, the same will be treated as valid compliance of this order. However, this relaxation shall not apply in those cases, where during the intervening period, Department has already taken recourse to any other measure as specified in the act for ensuring filing of tax return by the taxpayer concerned after declaring the return as Non-est.

Source: CIRCULAR NO.13/2016, F.No.225/46/2016-ITA.II, dated 09-05-2016

CBDT relaxes time limit for form 61 submission relating to mandatory quoting of PAN for specified transactions



CBDT relaxes timeline for online submission of Form 61 (Statement containing particulars of declaration received in Form No. 60) for the quarter ending March 31st 2016. Form 60 is a declaration to be filed by an individual or a person (not being a company or firm) who does have PAN and who enters into any specified transactions requiring mandatory quoting of PAN under rule 114B.

In view hardship faced in complying with online submission of Form No.61, CBDT provides that online reporting of declarations in Form No. 61 for quarter ending March, 2016 may be done along with report for quarter ending September, 2016. Further, mandates compulsory filling of all the fields in Form No.60 in respect of transactions entered on or after April 1, 2016.

Source: CIRCULAR NO.14/2016, F.No.370149/68/2016-TPL, dated 18-05-2016

Brief on Income Declaration Scheme 2016



The scheme is for all those persons who have not paid taxes in past to come forward and declare their income. They need to pay just 45% of the undisclosed income as tax (which will take of all taxes, interest, penalty and safeguard from the prosecution).

The scheme is applicable for:

- a) any income or
- b) any income in form of any investment in the asset located in India (Value of asset to be taken as fair market value as on 01.06.2016; also would be liable to capital gain tax in future on sale of the assets)

and the same is acquired out of income chargeable to tax in India under the income tax act for any assessment year prior to AY 2017-18.

The scheme is open from 01.06.2016 to 31.09.2016.

Process of Declaration

The Declaration shall be made in form 1at any time on or before 30.09.2016. Post which the jurisdictional Principal CIT/CIT will issue an acknowledgement in Form 2 within 15 days from the end of the month in which declaration under form -1 is made. The same will result in declarant not being liable for any adverse consequences under the scheme in respect of any income which has been declared under the scheme but found to be ineligible for the declaration. The declarant shall furnish the proof of payment to the jurisdictional Principal CIT/CIT in form -3. After which the CIT will issue form -4, a certificate of the accepted declaration within 15 days of the submission of the Proof of payment.

Mode of furnishing declaration

The declaration may be filed in any of the in any of the following under mentioned ways

- a) Online on the e filling website of the Income Tax site using DSC or electronic verification code
- or

b) In paper form before the jurisdictional Principal CIT/CIT.

Some cases not allowed to make declaration

As per the scheme the declaration cannot be made in following cases –

a) where a notice under section 142 or section 143(2) or section 148 or section 153A or section 153C of the Income-tax Act has been issued in respect of such assessment year and the proceeding is pending before the Assessing Officer.

For the purposes of declaration under the Scheme, it is clarified that the person will not be eligible under the Scheme if any notice referred above has been served upon the person on or before 31st May, 2016 i.e. before the date of commencement of this Scheme.

b) Where a search has been conducted u/s 132 or requisition u/s 132A or a survey has been carried out u/s 133A of the Income-tax Act in a previous year and the time for issuance of a notice under section 143 (2) or section 153A or section 153C for the relevant assessment year has not expired.

In the form of declaration (form 1) the declarant will also verify that these facts do not prevail.

c) cases covered under the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015. A person in respect of whom proceedings for prosecution of any offence punishable under Chapter IX (offences relating to public servants) or Chapter XVII (offences against property) of the Indian Penal Code or under the Unlawful

Activities (Prevention) Act or the Narcotic Drugs and Psychotropic Substances Act or the Prevention of Corruption Act are pending shall not be eligible to make declaration under the Scheme. A person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act or a person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, subject to the conditions specified in the Scheme, shall also not be eligible for making a declaration under the Scheme.

d) Income earned through corruption shall not be eligible for scheme.

Invalid Declarations

In the following situations, declaration shall be void:

- a) If the declarant fails to pay the entire amount of tax, surcharge and penalty within the specified date, i.e., 30.11.2016.
- b) Where the declaration has been made by misrepresentation or suppression of facts or information.
- c) Where the declaration is held to be void for any of the above reasons, it shall be deemed never to have been made and all the provisions of the Income-tax Act, including penalties and prosecutions.

Any tax, surcharge or penalty paid in pursuance of the declaration shall, however, not be refundable under any circumstances.

Effects of declarations

Where a valid declaration as detailed above has been made, the following consequences will follow:

- a) The amount of undisclosed income declared shall not be included in the total income of the declarant under the Income-tax Act for any assessment year.
- b) The contents of the declaration shall not be admissible in evidence against the declarant in any penalty or prosecution proceedings under the Income-tax Act and the Wealth Tax Act.
- c) Immunity from the Benami Transactions (Prohibition) Act, 1988 shall be available in respect of the assets disclosed in the declarations subject to the condition that the benamidar shall transfer to the declarant or his legal representative the asset in respect of which the declaration of undisclosed income is made on or before 30th September, 2017.
- d) The value of asset declared in the declaration shall not be chargeable to Wealth-tax for any assessment year or years.
- e) Declaration of undisclosed income will not affect the finality of completed assessments. The declarant will not be entitled to claim re-assessment of any earlier year or revision of any order or any benefit or set off or relief in any appeal or proceedings under the Income-tax Act in respect of declared undisclosed income or any tax, surcharge or penalty paid thereon.

Source: CIRCULAR NO.16/2016 and CIRCULAR NO.17/2016, dated 20-05-2016

Refund couldn't be denied just because scrutiny notice was served; HC quashed CBDT's instruction

Facts of the case



Tata Teleservices Ltd by way of instant petition has challenged Instruction No. 1 issued by CBDT and the consequential letter issued by Deputy Commissioner of Income-tax denying refund of assessee under section 143(1) for three assessment years.

Ruling of the High Court

It is the impugned instruction which is being relied upon by the Department to deny refund, where notice has been issued under section 143(2). The real effect of the instruction is to curtail the discretion of the AO by 'preventing' him from processing the return, where notice has been issued to the assessee under section 143(2). If the legislative intent was that the return would not be processed at all once a notice is issued under section 143 (2), then the legislature ought to have used express language and not the expression 'shall not be necessary'. By the device of issuing an instruction in purported exercise of its power under section 119, the CBDT cannot proceed to interpret or instruct the income tax department to prevent the issue of refund. In the event

that a notice is issued to the assessee under section 143 (2), it will be a matter the discretion of the concerned AO whether he should process the return.

Consequently, the Instruction No.1 of 2015 dated 13-1-2015 issued by the CBDT is unsustainable in law and is quashed. The said instruction cannot be relied upon to deny refunds to the assessees in whose cases notices might have been issued under section 143(2).

Source: Tata Teleservices Ltd Vs CBDT

High Court of Delhi, dated 17-05-2016

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