BHUTA SHAH & CO LLP

CHARTERED ACCOUNTANTS

BSC BEACON

Tax & Regulatory Insights

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Glossary

ABBREVIATION	FULL FORM
ACIT	Assistant Commissioner of Income Tax
Act	Income-tax Act, 1961
AO	Assessing officer
AY	Assessment Year
CIT	Commissioner of Income-tax
CPC	Centralized Processing Center
CCIT	Chief Commissioner of Income Tax
CIT(Appeals) / CIT(A)	Commissioner of Income-tax (Appeals)
CBDT	Central Board of Direct Taxes
DRP	Dispute Resolution Panel
DIN	Document Identification Number
DTAA	Double Taxation Avoidance Agreement
DCIT	Deputy Commissioner of Income Tax
HC	High Court
Hon	Hon'ble
FAO	Faceless Assessing Officer
ITAT	Income Tax Appellate Tribunal
JAO	Jurisdictional Assessing Office
NCLT	National Company Law Tribunal
NFAC	National Faceless Assessment Centre
PAN	Permanent Account Number
PY	Previous Year
PCIT	Principal Commissioner of Income Tax
PCCIT	Principal Chief Commissioner of Income Tax
SC	Supreme Court
TOLA	Taxation and Other Laws
TRC	Tax Residency Certificate

I. Direct Taxes

A. Corporate Taxes

1. ***Hon'ble High Court of Mumbai[1]:*** *Where the AO is aware about the non-existence of an entity, no notices or order should be issued in the name of the non-existent entity, even though the PAN of non-existing entity has not been deactivated.*

Background

The Assessee (Diversey India Hygiene Private Limited) was in receipt of several notices issued under Section 148 and Section 142(1) of the Act. These notices were issued to a non-existent entity i.e. Diversey India Private Limited (DIPL). The Assessee argued that DIPL got amalgamated with the Assessee from 1 April 2015 and referred to rulings of PCIT v. Maruti Suzuki India Ltd. [416 ITR 163] and Saraswati Industrial Syndicate Ltd v. CIT [186 ITR 278 (SC)], which held that the notices and assessment orders issued in the name of an amalgamated company that no longer exist are without jurisdiction and legally flawed.

Further, the Assessee also brought to the notice of the Hon'ble High Court that a letter dated 12 May 2016 was filed with the Assessing Officer and the Principal Commissioner, informing them about the amalgamation. Despite such information available on record, the AO issued the notices and passed assessment order dated 1 March 2019 for AY 2016-17.

However, the revenue authorities argued that the Assessee participated in re-assessment proceedings for AY 2012-13 and 2013-14 without protesting and that the PAN of the noticee (DIPL) was not deactivated.

[1] Diversey India Hygiene Private Limited v. ACIT [Writ petition No: 3034 and 3505 of 2022] / TS-673-HC-2023(BOM)

Judgement of the Hon'ble High Court

The Hon'ble High Court observed that PAN may not have been deactivated in view of the on-going proceedings for scrutiny or for issuance of refund for various prior years. The Hon'ble High Court also held since the tax authorities were aware about the non-existence of the amalgamating entity, it cannot sanction the department to issue notices to a non-existent entity. Accordingly, the Hon'ble High Court disposed of the writ petition by quashing the reassessment proceedings.

2. *Hon'ble High Court of Delhi[2]: Rejects departments argument that tax authorities are mandated to follow the proceedings under the new regime as per the ruling of the Supreme Court in the case of Ashish Agarwal for the already concluded reassessment proceedings under the old regime.*

Background

The department has initiated reassessment proceedings under Section 148 of the Act, vide notice dated 31.03.2021 under the old regime. A show cause notice was issued on 12.03.2022 proposing to add INR 50,94,24,738 alleging the same to be an accommodation entry. The Assessee filed its response on 22.03.2022 contending that the alleged accommodation entry in the bank accounts does not belong to him. Pursuant to the reply of the Assessee, the AO rejected Assessee's contention and passed order under Section 147 r.w.s 144 without making any addition, however, the Revenue issued demand notice of INR 67,55,23,292.

Against the said reassessment order, the Assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) allowed the appeal and directed the revenue to recalculate the gross total income. Consequent to SC ruling in Ashish Agarwal, the Revenue re-issued show cause notice under Section 148A(b) of the Act alleging that Assessee is

[2] Arun Khanna v. ITO, Ward 63(1) New Delhi & Ors. W.P. (C) 13578/2022 / TS-653-HC-2023(DEL)

beneficiary of accommodation entry of INR 50,94,24,738 which stood credited in HDFC bank and DCB bank maintained by Assessee in AY 2015-16. However, the Assessee objected to show cause notice on the contention that:

a) it does not maintain any bank account with HDFC and DCB bank, rather, it maintains bank account in ICICI and Jammu and Kashmir Bank,

b) show cause notice under Section 148A(b) is vague since no inquiry is conducted under Section 148A(a) and the assessment order under Section 147 read with Section 144 has been passed which was subject matter of appeal before CIT(A).

However, the Revenue rejected Assessee's objection and passed order under Section 148A(d) along with reassessment notice under Section 148 of the Act. Against the said order and notice, the Assessee filed a writ petition before the Hon'ble High Court.

Judgement of the Hon'ble High Court

The Hon'ble Delhi High Court observed that the moot point is whether Ashish Agarwal ruling mandates the Revenue to trigger proceedings under the new regime, even where the proceedings were commenced under the old regime based on a set of allegation and material which ultimately had culminated in an assessment order. The Hon'ble High Court remarks that, "no such aspect was the subject matter of discussion in the said judgement". It is observed that order under Section 148A(d) of the Act records that the Assessee failed to provide the evidence to establish the amount found in accounts maintained with HDFC Bank and DCB Bank in AY 2015-16, ignoring the fact that Assessee took emphatic stand that the bank accounts does not belong to him and also furnished bank statement of two accounts i.e., ICICI Bank and Jammu and Kashmir Bank duly maintained by him.

Further, it opines that in absence of actionable material, Revenue embarked to reopen a closed assessment which has reached to assessment order under Section 147 read with Section 144 of the Act at the time of issuance of show cause notice under Section 148A(b). Also, it has placed reliance on the order of CIT(A) which clearly demonstrated that no addition to the declared income was actually made by the Revenue except a demand notice stipulating tax demand of INR 67,55,23,292. The CIT(A) had called for a response to the remand report which was not placed by the Revenue. Accordingly, the Hon'ble High Court, held that in the absence of remand report, it is presumed that there might be a mistake of calculation of gross total income in the computation sheet. Thus, allows Assessee's appeal.

3. ***Hon'ble High Court of Bombay[3]:*** *Inadequate or improper Inquiry, cannot be a ground to invoke powers under section 263 of the Income Tax Act.*

Background

The AO pursuant to the assessment proceedings for AY 2006-07 under section 143(3) of the Act had allowed the Assessee's claim for deduction with respect to the write-off of interest receivable forgone of INR 6,01,84,862 on account of one-time settlement and the deduction for interest expenditure of INR 2,49,53,390 for the borrowings made for slum rehabilitation project considering it as revenue expenditure.

The Assessee was issued a show cause notice by CIT as to why the assessment order as issued by the AO should not be treated as erroneous and prejudicial to the interest of the revenue, considering that the AO has provided the excess relief by allowing these expenses without adequate inquiry.

The Assessee filed a detailed response by stating that both issues have already been dealt with by AO, and therefore it cannot be held as erroneous. However, the Commissioner rejected the submissions of the Assessee considering that AO has not examined these issues, and directed the assessment order passed by AO to be cancelled and a fresh assessment be restored.

The Tribunal pronounced in favour of the Assessee stating that the Assessee has duly filed the details as asked by the AO in the notice under section 142(1).

The Revenue, appealed before Bombay High Court on the substantial question of law, as to whether the Tribunal was justified in holding CIT was not correct in law in exercising the jurisdiction under section 263.

[3] PCIT vs. Shivshani Punarvasan Prakalp ltd [2023] 456 ITR 336 (Bom)

Judgement of the Hon'ble High Court

The Hon'ble High Court dismissing the appeal of revenue held that there is no error apparent nor any perversity in the findings of the Tribunal.

The Hon'ble High Court held that this was not the case where the AO had not made any inquiry and blindly accepted the return filed by the assesse.

It is pertinent here to refer to explanation 2 to section 263 which was inserted by Finance Act 2015, explanation 2 to section 263 was inserted by the Finance Act, 2015 with effect from June1, 2015. This Explanation empowers the Commissioner with effect from June 1, 2015 to invoke section 263 , if in the opinion of the Principal Commissioner or the Commissioner the order is passed without making inquiries or verification which should have been made ; (b) the order is passed allowing any relief without inquiring into the claim ; (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119 ; or (d) the order has not been passed in accordance with any decision which is prejudicial to the Assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the Assessee or any other person. Prior to insertion of Explanation 2 with effect from June 1, 2015, it was the prerogative of the Assessing Officer to determine what inquiries he wanted to make while completing the assessment. Where two views are possible, the revisional CIT could not invoke section 263 of the Act and substitute his views upon the view of the AO unless the view taken by the AO is unsustainable in law.

Going forward due consideration should be made to the amendment by the Finance Act 2015, before placing any reliance on this decision.

4. *Hon'ble High Court of Gujarat[4]: Allows concessional tax rate under section 115BAA in case of a delay in e-filing of Form 10-IC caused by technical error.*

Background

The Assessee is in the business of textile, filed its return of income for the A.Y.2020-21 on 15.01.2021 declaring income as NIL. The Assessee while filing return of income opted to be taxed as per provisions of Section 115BAA. The return of income was processed by the CPC and the income of Assessee was taxed as per Section 115JB of the Act. The Assessee was taxed as per section 115JB of the Act for the reason that it had not filed Form No.10-IC, on or before the due date of filing of return of income.

[4] PCIT vs. KGY Glass Industries (P) Ltd [TS-625-HC-2023] (GUJ)

Aggrieved by the order of AO not assessing the Assessee at concessional rate of tax under section 115BAA of the Act, it preferred an appeal before CIT (Appeal). The CIT (Appeal) confirmed the order of Assessing Officer on the ground that filing of Form No.10-IC electronically, on or before the due date of filing of return is the mandatory requirement as per sub-section (5) of section 115BAA of the Act read with Rule 21AE of the Income-Tax Rules,1962.

Against the order of CIT (Appeal), the assesse preferred appeal before the ITAT and ITAT allowed the appeal of the Assessee.

On further Appeal Gujrat High Court held as under:

Judgment of Hon'ble High Court

The Hon'ble High Court held that since the Assessee could not upload Form No.10-IC, on ITBA portal on account of technical error, there being no fault of the Assessee, it could not be deprived of benefit particularly when this being the first year for availing such benefits.

5. *Hon'ble High Court of Delhi[5]: Quashes reassessment proceedings opened beyond 3 years where the concealed income is below INR 50 lakhs.*

Background

Joint writ petition was filed before the Hon'ble Delhi High Court by a group of petitioners' {collectively referred as Assessee(s)} for assessment years 2016-17 and 2017-18 for reassessment proceedings in connection with escaped income the quantum of which was below INR 50 lakhs.

[5] ITO vs. Ganesh Dass Khana [TS-674-HC-2023-DEL]

The issue under consideration was that since the quantum of escaped income is below INR 50 lakhs, would the period of limitation under section 149(1)(a), being 3 years from the end of assessment year be applicable.

The income-tax department argued that the notices were within the limitation period - they relied on a conjoint reading of the Hon'ble Supreme Court's judgement in case of Union of India and Ors. vs. Ashish Agarwal (2022) 444 ITR 1 (SC), Instruction No.01 of 2022 dated 11 May 2022 issued by the CBDT in exercise of powers under Section 119 of the Act and the Tax and Other Laws (Relaxation of Certain Provisions) Act, 2020 (TOLA 2020).

The contentions raised on behalf of the Assessee were:

a) The orders passed under section 148A(d) of the Act and consequent notices issued under section 148 have exceeded the prescribed limitation, which is 3 years from the end of relevant assessment year as the proceedings for AY 2016-17 and AY 2017-18 would be time barring on 31.03.2020 and 31.03.2021 respectively. Therefore, since all notices are issued after 01.04.2021, they are time barred.

b) The extended time period available under section 149(1)(b) of the Act which extends to 10 years is not available to the revenue as the escaped income in all cases are below 50 lakhs.

c) The travel back in time theory is not borne from the decision of the Supreme Court nor from TOLA, 2020

d) TOLA has not allowed the notices issued in and after May and June 2022 to be treated as having been issued on or before 31.03.2021, to calculate the period of limitation prescribed in section 149(1)(a) of the Act

e) Instruction dated 11.05.2022 issued by the CBDT, which states in paragraph 6.1 that the extended reassessment notices would travel back in time to their original date when such notices were issued, provides no clarity as to what that "original date" would be

f) The fallacy in the revenues stand is that while it wishes to travel back in time by applying the period of limitation available prior to Finance Act, 2021 coming into force, it simultaneously seeks to apply the amended provisions. Therefore, if the unamended provisions are applied, the end date for expiration of limitation for AYs 2016-17 and 2017-18 would be 31.03.2023 and 31.03.2024, respectively. In such a situation, TOLA, 2020 would have no application (contrary to what is

contended by revenue) as it applied to compliances and proceedings whose limitation expired between 20.03.2020 and 31.03.2021

g) The decision of Supreme court clearly stated that post 31.03.2021, the new regime, as per Finance Act, 2021 would apply. It indicated that notice issued between 01.04.2021 and 30.06.2021 would be treated as notices issued under section 148A(b). i.e. new regime

h) TOLA does not delegate any power to the Central Government to postpone the applicability of the new regime by the Legislature

i) The amendments in Finance Act, 2021 intends to reduce the litigation and compliance burden, remove discretion, impart certainty and promote ease of doing the business. It is in this light that for cases where the escaped income was below 50 lakhs, the limitation period was reduced to 3 years and where the escaped income was more than 50 lakhs, the revenue can enquire up to 10 years.

Judgement of Hon'ble High Court

The Hon'ble Delhi High Court observed that in the landmark judgement of Ashish Agarwal, the Hon'ble Supreme court did not deal with the subject matter of limitation under section 149 of the Act.

It held that a careful perusal of the judgment of the Supreme Court rendered in Ashish Agrawal's case and the provisions of TOLA would show that neither the said judgment nor TOLA allowed for any such modality to be taken recourse to by the revenue, i.e., that extended reassessment notice would "travel back in time" to their original date when such notices were to be issued and thereupon the provisions of amended Section 149 would apply.

Furthermore, a perusal of the judgment of the Supreme Court rendered in Ashish Agrawal's case would show that it did not rule on the provisions contained in TOLA or the impact they could have on the reassessment proceedings. In any event, TOLA conferred no such power on the CBDT.

6. ***Hon'ble High Court of Delhi[6]:*** *Held that the Hon'ble High Court held that a successful applicant whose resolution plan has been approved should not be put in a position where it is called upon to liquidate dues of creditors, including statutory creditors, which were not embedded in the resolution plan. Revenue cannot continue with assessment process for the period which precedes date of approval of resolution plan.*

Background

Tata Steel Ltd. (TSL / the Assessee) acquired Bhushan Steel Ltd under Insolvency and Bankruptcy Code, 2016 (IBC) in 2018 and named it as Tata Bhushan Steel Ltd. (TBSL). TBSL got merged with Tata Steel in 2019, a year after the acquisition. The Assessee was issued a notice under the provisions of the Income Tax Act fo.r payment of demand of INR 257.8 crore pertaining to assessment years 2001-02, 2009-10, 2010-11, and 2013-14. Also, the tax authority demanded an explanation from the Assessee why a penalty under section 221(1) of the Income-tax Act should not be imposed.

The Assesssee approached the Hon'ble Delhi High Court by way of a writ petition, questioning the jurisdiction of the income-tax department to enforce the demand for tax and penalty. The Assessee argued that the demand concerns periods which precede the date of approval of the Resolution Plan (RP) by the concerned bench of National Company Law Tribunal (NCLT) and, therefore, fall within the ambit of the "clean slate" principle. In other words, its submission was that once the RP is approved, all stakeholders, i.e. secured creditors, unsecured creditors, shareholders, workers and employees, are bound by the terms contained therein. As an extension, revenue being no different from other creditors and should not be allowed to make the said claims on the Assessee. The income-tax authorities argued that the Insolvency and Bankruptcy Code did not restrict the income-tax department's authority to pursue assessment proceedings even though the dues were not outstanding on the date of approval of the resolution plan.

[6] DCIT vs. Tata Steel Limited [TS-648-HC-2023-DEL]

Judgement of Hon'ble High Court

The Hon'ble High Court held that a successful applicant whose resolution plan has been approved should not be put in a position where it is called upon to liquidate dues of creditors, including statutory creditors, which were not embedded in the RP. a successful applicant is, in law, provided with a "clean slate"; therefore, dues for the period prior to the date when the RP was approved cannot be recovered. The submission advanced on behalf of the revenue that it could continue with the assessment/reassessment process concerning the assessment years in issue is 'entirely untenable'. Therefore, the submission advanced on behalf of the revenue that it could continue with the assessment/reassessment process concerning the AYs in issue is entirely untenable.

The Hon'ble Delhi High Court observed that the IBC was made to reorganise and resolve the money problems of businesses at a certain time. It wanted to make the most of the business's value, encourage new businesses and balance everyone's interests, including how much people owe to the government.

The Court highlighted that Section 238 of the IBC shall have effect notwithstanding anything inconsistent content in any other law. Thus, where matters covered by the 2016 Code are concerned [including insolvency resolution of corporate persons] if provisions contained therein are inconsistent with other statutes, including the 1961 Act, it shall override such laws.

7. ***Hon'ble High Court of Calcutta[7]:*** *Held that issuance of notice by JAO under section 148 is legally justifiable instead of National Faceless Assessment Centre, as per office memorandum dated 20th February, 2023 being F No. 370153/7/2023-TPL.*

Background

In a writ petition, petitioner has challenged the notice under Section 148 of the Income Tax Act, 1961 relating to assessment year 2019-20 on the ground that the same has been issued by the jurisdictional assessing officer and not by National Faceless Assessment Centre as required under Section 151A.

Judgement of Hon'ble High Court

In view of para 4 of the office memorandum dated 20th February, 2023 being F No. 370153/7/2023-TPL, the Hon'ble high court dismissed the writ petition. Para 4 of the same reads as follow:

"4. It is also pertinent to note here that under the provisions of the Act both the JAO as well as units under NFAC have concurrent jurisdiction. The Act does not distinguish between JAO or NFAC with respect to jurisdiction over a case. This is further corroborated by the fact that under section 144B of the Act the records in a case are transferred back to the JAO as soon as the assessment proceedings are completed. So, section 144B of the Act lays down the role of NFAC and the units under it for the specific purpose of conduct of assessment proceedings in a specific case in a particular Assessment Year. This cannot be construed to be meaning that the JAO is bereft of the jurisdiction over a particular Assessee or with respect to procedures not falling under the ambit of section 144B of the Act. Since, section 144B of the Act does not provide for issuance of notice under section 148 of the Act, there can be no ambiguity in the fact that the JAO still has the jurisdiction to issue notice under section 148 of the Act."

[7] Union of India vs. Sanghi Steel Udyog Private Limited [TS-693-HC-2023]

B. International Tax

1. ***Delhi ITAT[8]:*** *Unless proved through cogent evidence that the Assessee is a conduit company, TRC issued by the competent authority in Mauritius would not only determine the residential status of the Assessee, but also its entitlement under the treaty provisions.*

Background

The Assesse is a non-resident corporate entity and a tax resident of Mauritius, possessing a valid Tax Residency Certificate issued by the Mauritian Revenue Authorities. Being an investment holding company, the Assesse had acquired shares in an Indian company, M/s. EmNa Bios Diversus Pvt. Ltd., prior to 1 April 2014. During AY 2018-19, the Assesse sold these shares. In the Return of Income for the said A. Y. the assesse claimed exemption under Article 13(4) of the India – Mauritius DTAA in respect of Long term capital gains.

During the assessment proceedings, the AO contended that the entity was a conduit company and was set up solely as a conduit company for the purpose of availing treaty benefits. For this purpose, AO argued that there was a very negligible

[8] Veg 'N' Table Vs. DCIT [ITA No.2251/Del/2022]

presence in Mauritius and there was no commercial rationale for investing through Mauritius. Accordingly, the AO charged the long term capital gains to tax vide the draft assessment order.

The Assessee raised objections before the Dispute Resolution Panel (DRP), which upheld the Assessing Officer's decision. On further appeal to ITAT, it was held as under.

Decision of ITAT

The Delhi Tribunal has held that the Assessee in question cannot be deemed a conduit company as the departmental authorities have failed to prove this. Therefore, the Tax Residency Certificate (TRC) issued by the competent authority in Mauritius is relied upon to determine the residential status of the Assessee and its entitlement under the treaty provisions. The Tribunal relied on SC ruling in the case of Azadi Bachao Andolan and jurisdictional HC ruling in the case of Blackstone Capital wherein it was held that the person/entity holding a valid TRC would be entitled to the DTAA benefits.

The Tribunal also dismissed the Revenue's argument that the Assessee is a conduit entity set up in Mauritius solely for the purpose of availing DTAA benefits.

The Tribunal observed that there is no substantial and cogent material to support this conclusion of the Revenue. While Section 90(2A) of the Income Tax Act empowers the Revenue to deny DTAA benefits in case General Anti-Avoidance Rule (GAAR) is applicable, the Revenue chose not to invoke the provisions of GAAR even though it is applicable to the relevant Assessment Year. Also, the Revenue did not invoke the Limitation of Benefit clause, under Article 27A of India-Mauritius DTAA.

[6] Dr. Reddys Laboratories Ltd. vs. Deputy Commissioner of Income-tax [TS – 583 – HC – 2023 TEL]

II. Goods and Services Tax

1) Failure to Mention Statutory Provision by the tax authorities in Show Cause Notice Doesn't Prejudice Defaulter If Facts Stand Admitted.

The Kerala High Court in its recent ruling in the case of M/s Global Plasto Wares v/s Assistant State tax officer & Others (W.A. No 1874 of 2023) has made it clear that merely because the show cause notice issued to a defaulter under the GST Act did not refer to a particular statutory provision that may be attracted against such defaulter, the same cannot be said to have caused prejudiced when the facts leading to the invocation of the statutory provision concerned were admitted.

Brief facts of the case:

a) The appellant has not discharged the tax due to the tax authorities despite collecting the same from its customers.

b) The appellant duly admitted the fact that it had not discharged the tax which was collected from the customer

c) The appellant appealed against the show cause notice wherein the section number of penalty was not mentioned in the show cause notice.

Judgement of Hon'ble High Court

The high court in its ruling while dismissing the appeal mentioned that "The Assessing Authority, having found that as per the provisions of Section 73(11) of the CGST/SGST Act, the appellant would be liable to penalty in view of the non-payment of tax collected from its customers, we see no reason to interfere with the findings of the learned Single Judge that

upheld the order of the Assessing Authority laying down the correct position in law. Merely because the show cause notice issued to the appellant did not refer to a particular statutory provision, the appellant cannot be said to have been prejudiced when the facts leading to the invocation of the statutory provision concerned were admitted by the appellant,"

2) Advisory for the procedures and provisions related to the amnesty for taxpayers who missed the appeal filing deadline for the orders passed on or before March 31, 2023

a) Taxpayers can now file an appeal in FORM GST APL-01 on the GST portal on or before January 31, 2024, for the order passed by the proper officer on or before March 31, 2023. It is further advised that the taxpayers should make payments for entertaining the appeal by the Appellate officer as per the provisions of Notification No. 53/2023. The GST Portal allows taxpayers to choose the mode of payment (electronic Credit/Cash ledger), and it is the responsibility of the taxpayer to select the appropriate ledgers and make the correct payments. Further, the office of the Appellate Authority shall check the correctness of the payment before entertaining the appeal and any appeal filed without proper payment may be dealt with as per the legal provisions.

b) If a taxpayer has already filed an appeal and wants it to be covered by the benefit of the amnesty scheme would need to make differential payments to comply with Notification No. 53/2023.

III. CBDT Circulars & Notification

1. *CBDT[9] prescribes process, monetary & time limits for withholding refund.*

Section 245 of the Act provides for set off and withholding of refunds in certain situations. Under section 245(1), a refund may be withheld if a demand has been determined after the assessment is complete etc.

On the other hand, section 245(2) applies when Assessing Officer believes that a demand is likely to be raised during an ongoing proceedings and that granting a refund would negatively impact the revenue. In such cases the refund is to be withheld.

The CBDT has issued an instruction 02/2023 dated 10.11.2023 which lays down the monetary threshold and procedure to be followed for withholding of refund under section 245(2) of the Act.

The relevant extract of the instruction is as follows:

The monetary limit for applying provisions of section 245(2) of the Income-tax Act, 1961('the Act) will hereinafter be where the value of refund is INR 10 lakhs or more.

1. *In any case where section 245(2) of the Act is applicable, the Faceless Assessing Officer (FAO), on receipt of communication from CPC, shall intimate the Jurisdictional Assessing Officer (JAO) with regard to demand likely to be raised in the pending assessment(s). The JAO, based on such information shall record in writing, with proper application of mind and after analysing the factual matrix of*

[9] CBDT instruction no. 02/2023 dated 10.11.2023

the case (which, inter-alia, includes the financial condition of the assesse, past demands, pendency of appeals et al) and seek approval of the jurisdictional Principal Commissioner of Income-true. The reasons recorded shall not be cursory. Such reasons should reflect the factual analysis of the case by the JAO. The JAO will communicate the final decision regarding withholding/release of refund to the CPC.

2. *To finish the above process, the time limit is hereby revised to 20 days for the Faceless Assessment Unit and to 30 days for Jurisdictional Assessing Officer.*

2. CBDT[10] notifies Information Exchange and Tax Collection Assistance Agreement with Saint Vincent and Grenadines

The CBDT, vide Notification No. 96/2023 dated Nov 1, 2023, notifies Agreement between India and Saint Vincent and the Grenadines for the Exchange of Information and Assistance in Collection with Respect to Taxes. The Agreement became effective on February 14, 2023, following the completion of required procedures under the respective laws of both countries.

3. The Income Tax Department introduces a new feature called "Discard Return"

The Income Tax Department has launched a new feature called "Discard Return". With this new feature, individuals can now delete there previously filed un-verified income tax return and file a new return. This feature will helpful in avoiding filing revised return. Users can avail this option from A.Y. 2023-24 onwards. This option is available till the time limit specified for filing income tax returns under section 139(1)/139(4) /139(5) i.e. 31st December of respective A.Y.

The FAQ issued by income tax department in this regard is as follows:

Question 1:

I filed my Original ITR under section 139(1) on 30th July 2023 but not yet verified. Can I Discard it?

Response:

Yes, user can avail the option of "Discard" for the ITRs being filed under section 139(1) /139(4) / 139(5) if they do not want to verify it. User is provided a facility to file

[10] Notification no. 96/2023 dated 01.11.2023

an ITR afresh after discarding the previous unverified ITR. However, if the "ITR filed under section 139(1)" is Discarded and the subsequent return is filed after the due date under section 139(1), it would attract implications of belated return like 234F etc., Thus, it is advised to check whether the due date for filing the return under section 139(1) is available or not before discarding any previously filed return.

Question 2:

I Discard my ITR by-mistake. Is it possible to reverse it?

Response:

No, if ITR is Discarded once, it can't be reversed. Please be vigilant while availing Discarding option. If an ITR is Discarded, it means that, such ITR is not filed at all.

Question 3:

Where can I find "Discard option" ?

Response:

User can find Discard option in below path :

www.incometax.gov.in Login e-File Income Tax Return e-Verify ITR "Discard"

Question 4:

Is it mandatory to file subsequent ITR if I "Discarded" my previous unverified ITR ?

Response:

A user, who has uploaded the return data earlier, but has made use of the facility to discard such unverified return is expected to file subsequent an ITR later on, as it is expected that he is liable to file the return of income by way of his earlier action.

Question 5:

I sent my ITR V to CPC and it is in transit and not yet reached CPC. But I don't want to verify the ITR as I get to know that details not reported correctly. Can I still avail "Discard" option?

Response:

User shall not discard such returns, where the ITR-V has already been sent to CPC. There is an undertaking to this effect before discarding the return.

Question 6:

When can I avail this "Discard" option and can I avail this "Discard" option multiple times or only once?

Response:

User can avail this option only if the ITR status is “unverified” / “Pending for verification”. There is no restriction on availing this option multiple times. Precondition is “ITR status” is “Unverified” / “Pending for verification”.

Question 7:

My ITR filed for AY 2022-23 is pending for verification. Can I avail this “Discard” option?

Response:

User can avail this option only from AY 2023-24 onwards for the respective ITR. This option will be available only till time limit specified for filing ITR under section 139(1)/139(4) /139(5) (i.e., 31st December of respective AY as of now).

Question 8:

I discarded my Original ITR 1 filed on 30th July 2023 on 21st August 2023 and I want to file subsequent ITR on 22nd August 2023. Which section should I select?

Response:

If user discards the Original ITR filed under section 139(1) for which due date under section 139(1) is over, they are required to select 139(4) while filing subsequent return. As there is no prior valid return exist, date of Original ITR / Acknowledgement number if Original ITR fields are not applicable. Further, if user wants to file revised return in future, he needs to provide details of “Original filing date” and “Acknowledgement number” of the valid ITR i.e., ITR filed on 22nd August 2023 for filing revised ITR

IV. Audit and Assurance

IFRS S2 (Sustainability Disclosure Standard): Climate-related Disclosures

1) IFRS S1 General Requirements for Disclosure of Sustainability-related financial information are also followed, earlier application of IFRS S2 is allowed.
2) IFRS S2 is effective for annual reporting periods commencing on or after January 1, 2024.
3) In order to help users of general-purpose financial reports make decisions about whether or not to provide resources to an entity, IFRS S2 requires entities to disclose information about their climate-related risks and opportunities that could reasonably be expected to affect an entity's cash flows, financing availability, or cost of capital over the short, medium, or long term must be disclosed, according to IFRS S2.
4) IFRS S2 is relevant for:
    a. risks associated with climate change to which the entity is exposed include:
        (a) physical hazards linked to climate change; and
        (b) risks of a climate-related transition; and
        (c) opportunities the entity has in relation to the climate.
5) The guidelines for reporting details about an entity's climate-related risks and opportunities are outlined in IFRS S2. Specifically, IFRS S2 mandates that an organization provide information that helps readers of general purpose financial reports comprehend:

- the governance procedures, controls, and processes that the organization employs to keep an eye on, oversee, and manage risks and opportunities related to climate change;
- the organization's plan for handling opportunities and risks associated with climate change;
- the procedures the organization employs to recognize, evaluate, rank, and track climate-related risks and opportunities, as well as whether and how those procedures are incorporated into and contribute to the organization's broader risk management process; and
- the entity's performance in relation to the risks and opportunities associated with climate change,
- including its progress toward any targets it has set or that it must meet by law or regulation.

6) As of now, the BRSR (Business Responsibility and Sustainability Reporting) standard in India has not undergone any changes. However, there is anticipation that in the near future, both SEBI (Securities and Exchange Board of India) and ICAI (Institute of Chartered Accountants of India) may introduce amendments to align with global standards, specifically the IFRS (International Financial Reporting Standards) S2 on Climate-related disclosures. This development is expected to mandate Indian companies to incorporate comprehensive climate-related disclosures in their annual reports, reflecting a commitment to aligning with international best practices and addressing environmental considerations in corporate reporting.

V. Compliance Calendar Dec. 23

A. Income Tax

Sr No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
1.	7th Dec	November 2023	TDS / TCS Payment	Non-Government Deductors
2.	15th Dec	Quarter 3 (Oct – Dec 2023)	Advance Tax payment	All Assessee
3.	31th Dec	Financial Year 2022-23	Filing of Revised or Belated Income tax Return for A.Y. 2023-24	All Assessee

B. Goods and Service Tax

Sr No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
1.	10th Dec.	Nov. 23	GSTR – 7 (TDS)	Person required to deduct TDS under GST
2.	10th Dec.	Nov. 23	GSTR – 8 (TCS)	Person required to collect TCS under GST
3.	11th Dec.	Nov. 23	GSTR 1	a) Taxable persons having annual turnover > Rs. 5 crore in FY 2022-23 b) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2022-23 and not opted for Quarterly Return Monthly Payment (QRMP) Scheme
4.	13th Dec.	Nov. 23	GSTR – 1 (IFF)- QRMP	Aggregate Turnover is up to Rs. 5 crores
5.	13th Dec.	Nov. 23	GSTR – 6 (ISD)	Person registered as ISD

Sr No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
6.	20th Dec.	Nov. 23	GSTR – 3B	a) Taxable persons having annual turnover > Rs. 5 crore in FY 2022-23 b) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2022-23 and not opted for QRMP scheme
7.	13th Dec.	Nov. 23	GSTR - 5 (NRTP)	Non-resident taxable person (NRTP)
8.	20th Dec.	Nov. 23	GSTR - 5A (OIDAR)	OIDAR services provider
9.	25th Dec.	Nov. 23	GSTR – 3B - QRMP scheme- Monthly payment *	Aggregate Turnover is up to Rs. 5 crores
10.	31st Dec.	F.Y. 2022-23	GSTR-9 & 9C (Annual Return and GST Audit)	Refer below table***

* i - Taxpayers who have availed the Quarterly Return Monthly Payment (QRMP), option having aggregate TO up to INR 50 Mn in PFY whose principal place of business is in Category -1 states

*ii - Taxpayers who have availed the Quarterly Return Monthly Payment (QRMP), having aggregate TO up to INR 50 Mn in PFY whose principal place of business is in Category -2 states

***iii - GSTR 9 & 9C Applicability:

Sr No.	Particulars	GSTR-9	GSTR-9C
1.	Applicability Turnover	GST regular taxpayer except with aggregate turnover above INR 2 crores	GST regular taxpayer with aggregate turnover above INR 5 crores
2.	Exclusions	a) Casual Taxable Person b) Non-Resident Taxable Person c) Input Service Distributor d) Unique Identification Number Holders e) Online Information and Database Access Retrieval (OIDAR) Service providers f) Composition Dealers g) Persons subject to TCS or TDS provisions	Not Applicable
3.	Due date	31st December 2023	31st December 2023
4.	Late fee / Penalty for delayed filling	Late fees of INR 200 per day of delay (INR 100 each in case of CGST and SGST) subject to a maximum cap of 0.25% of total turnover in respective State / UT	No specific provision so general penalty under Section 125 i.e., INR 50,000 (25,000 each in case of CGST and SGST)

C. FEMA Compliance

Sr No.	Due Dates	Particulars	Applicable to
1.	7th Nov.	ECB 2 Return (External Commercial Borrowing)	All Indian Borrowers who have non-resident lenders

BHUTA SHAH & CO LLP
CHARTERED ACCOUNTANTS

About us

Bhuta Shah & Co LLP (BSC) is a dynamic professional Chartered Accountants firm with a distinctive blend of skill sets, experience and expertise. Established in the year 1986, we operate from our Head Office in Nariman Point, Mumbai while having 6 offices across India in Mumbai, Pune, Ahmedabad and New Delhi.

We offer our clients a wide range of services including Audit & Assurance, Direct Taxation, Indirect Taxation, Transaction Advisory, Corporate Finance, Corporate Advisory, Risk Advisory, Cyber Security and Resolution & Insolvency Advisory.

We provide services to a diverse set of leading Indian and Multinational Clients, including FPIs, Mutual Funds, Large Banks, Broking Institutions, Listed Companies including Pharmaceutical Companies, Manufacturing Companies, Insurance Companies, Realty Companies, Jewellery Companies, Hospitals and several other Large and Medium Businesses.

Our forte is high quality services to our clients based on the core principles of Quality, Focus, Timeliness and Commitment.

The Leadership Team comes with rich experience and is supported by a competent and efficient team of Professionals including Chartered Accountants, Professionals with Big-4 Consulting and Industry experience, Advocates, Company Secretaries, MBAs, Former IRS Officers, who are committed to providing timely, professional and quality services to our clients.

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