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CHALLENGES IN TAX AUDIT AND CHANGES IN FORM NO.3CD – AY.18-19

CBDT Notification No.33/2018 dt. 20/07/18.

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- Amended Form No.3CD with effect from 20/08/2018;
- Amendment in 6 existing clauses;
- Insertions of 9 more clauses;
- to incorporate further reporting requirement related to GST, Transfer pricing, Statement of Financial Transactions, Section 32AD, Income from other sources as referred to in clause (x) of sub-section (2) of section 56,

- Secondary adjustment to transfer price – section 92CE, Limitation of Interest deduction u/s 94B, section 269ST- Cash Receipt / Payment of More than 2 Lakh from a single person in a day,
- Deemed Dividend- Section 2(22)(e),
- General anti-avoidance rule – chapter X-A, Furnishing of report in respect of international group etc.

Clause 4 – Indirect tax related

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- To furnish registration number or GST number or any other identification number allotted

Clause No.19 – Insertion of S.32AD

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- Where an assessee sets up an undertaking or enterprise for manufacture of any article or thing;
- On or after 01/04/2015;
- In any backward area notified by Cent. Govnt.;
- In the state of Andhra Pradesh / Bihar / Telangana / West Bengal;
- And acquires and installs any new assets during the period 01/04/2015 to 01/04/2020;
- Sub-section (1) provides for deduction of 15% of actual cost of new assets in the AY in which it is installed;

Clause No.24 – Deemed Profit –

S.32AD

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- If the acquired new assets is sold within a period of 5 years and if the deduction of 15% was claimed and allowed in the year of its installation, then;
- such deduction of 15% as allowed shall be treated as income under the head “PGBP” in the year in which it was sold;
- In addition to taxability of capital gains arising on account of transfer of such new assets.

IFOS – S.56(2)(ix) – inserted by FA, 2014 w.e.f 1/4/2015.

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- S.56(2)(ix) – any sum of money received as an advance or otherwise in the course of negotiation for transfer of capital asset, if,-
- (a) such sum is forfeited; and
- (b) the negotiation do not result in transfer of such capital asset.

Insertion of Clause – 29A

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- **Reporting of amount chargeable u/s 56(2)(ix) as IFOS.**
- **(29a)** Whether any amount is to be included as income chargeable under the head '**income from other sources**' as referred to in clause (ix) of sub-section (2) of section 56? (Yes/No)
- (b) If yes, please furnish the following details:
 - (i) Nature of income:
 - (ii) Amount thereof:

IFOS – S.56(2)(x) – inserted by FA, 2017 w.e.f 1/4/2017.

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- S.56(2)(vii) were applicable only to an individual and HUF, which provides that any sum of money or any property received by an individual or HUF without consideration or for inadequate consideration (in excess of Rs. 50,000) shall be taxable as income from other sources.
- S.56(2)(x), as inserted by the FA, 2017 w.e.f.1/4/2017, extended the scope to all taxpayers.

Insertion of Clause – 29B

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- **Reporting of amount chargeable u/ 56(2)(x) as IFOS.**
- **29B.**
- (a) Whether any amount is to be included as income chargeable under the head ‘income from other sources’ as referred to in clause (x) of sub-section (2) of section 56? (Yes/No)
- (b) If yes, please furnish the following details:
 - (i) Nature of income:
 - (ii) Amount (in Rs.) thereof:”;

S.269ST – Cash Transactions limit of Rs.2,00,000/-

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- No person shall receive an amount of **Rs 2 Lakh** or more;
- (a) in aggregate from a person in a day (or)
- (b) in respect of a single transaction (or)
- (c) in respect of transactions relating to one event or occasion from a person,
- Otherwise than by account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account.

S.271DA – Penalty for failure to comply with provisions of S.269ST

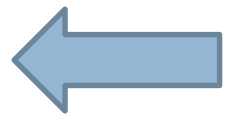
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- Recipient shall be liable to pay, by way of penalty, **a sum equal to the amount of such receipt;**
- Provided **no penalty** shall be imposable if such person proves that there were **good and sufficient reasons for the contravention.**

receive an amount of Rs 2 Lakh or more

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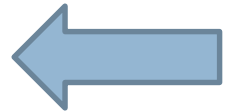
- The provision talks about the receipt;
- It does not talk about revenue or capital or any kind of gift etc.
- Therefore, any amount received in excess of Rs.2 Lakh, otherwise than stipulated requirement, provisions of S.269ST would hit.



a person in a day

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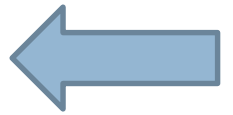
- If cash amount received in excess of Rs.2,00,000/- from a single person in a day, provisions of S.269ST would be hit;
- If received from different persons, provisions of S.269ST would not hit, subject to the condition that amount received from a single person is not in excess of Rs.2,00,000/-



a single transaction

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- If cash amount is received from a single transaction in excess of Rs.2,00,000/-, irrespective of the fact whether the same is received on a single day or otherwise, provisions of S.269ST would be hit.



one event or occasion from a person

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- This condition is certainly of widest amplitude as it seeks **to cover all receipts from a person in relation to transactions in respect of single event or occasion;**
- It would cover all transactions relating to one event or occasion such as cash gifts on the occasion of marriage, birthday, anniversary etc.
- **S.56(2)(x)(a)** – any sum of money, without consideration, the aggregate value of which exceeds Rs.50,000/-, the whole of the aggregate of value of such sum shall be chargeable IFOS.
- **First proviso**, the clause shall not be applicable, if it is received from,
 - (a) from a relative, or
 - (b) on the occasion of the **marriage of individual or**
 - **Etc.....**

Poser

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- Mr.X, on his marriage (30/05/2017), receives cash gift of Rs.5,00,000/- from his relatives and friends.
- What shall be implication under the provisions of S.56(2)(x)(a) and S.269ST of the Act?
- By virtue of Proviso to S.56(2)(x)(a), not chargeable to tax as IFOS.
- However, the AO may initiate penalty proceedings u/s 271DA for violation of S.269ST of the Act.
- If Mr.X is able to satisfy that such violation was for the sufficient and good reasons, the AO may not levy penalty.

Poser

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- During the course of the assessment proceedings, Mr. X could not place on record the name of persons who have given cash gift to him on the occasion of his marriage.
- Can addition be made by the AO u/s 68 of the Act as unexplained cash credit?
- Litigative.
- If Mr. X is unable to establish creditworthiness and genuineness of the transaction, apart from identity, the AO may make addition u/s 68 of the Act.

Insertion of entry (ba)/(bb)/(bc)/(bd) after (b) to Clause no.31

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- **(ba)** Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, during the previous year, **where such receipt is otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account:—**
- (a) Name, address and PAN (if available with the assessee) of the payer;
- (b) Nature of transactions;
- (c) Amount of receipts (in Rs.);
- (d) Date of receipt

- **(bb)** Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, **received by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year:—**
- (a) Name, address and PAN (if available with the assessee) of the payer;
- (c) Amount of receipts (in Rs.).

- (bc) Particulars of **each payment** made in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion to a person, **otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year**
- (a) Name, address and PAN (if available with the assessee) of the payee;
- (b) Nature of transactions;
- (c) Amount of payment (in Rs.);
- (d) Date of receipt

- **(bd)** Particulars of each payment in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion to a person, made by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year
- (a) Name, address and PAN (if available with the assessee) of the payee;
- (c) Amount of payment (in Rs.)

Clause 34(b) – eTDS details

- Earlier, the reporting requirement in respect of TDS was only about deduction and collection of TDS.
- Now it requires the assessee to report whether the assessee is required to furnish the statement of tax deducted or tax collected. If yes, then the following should also be reported:
 - (a) Due date of furnishing
 - (b) Date of furnishing, if furnished
 - (c) Whether the statement contains information about all details/transactions which are required to be reported. If not then list of details/transactions which are not reported.

Insertion of new clause – 36A

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- **Reporting of deemed dividend u/s 2(22)(e) of the Act.**
- *36A. (a) Whether the assessee has received any amount in the nature of dividend as referred to in*
- *sub-clause(e) of clause (22) of section 2?*
(Yes/No.)
- *If yes, please furnish the following details:—*
 - ▣ *Amount received (in Rs.):*
 - ▣ *Date of receipt:*

S.285BA read with Rule 114E

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- S.285BA of the Act provides for obligation to furnish statement of financial transaction or reportable account;
- Rule 114E provides for furnishing of statement of financial transactions (SFT);
- Entry no.11 in a table in Rule 114E requires reporting by any person who is liable for audit under section 44AB of the Act, of Receipt of cash payment exceeding 2 lakh rupees for sale, by any person, of goods or services of any nature.

Insertion of Clause 42.

- Reporting of SFT in Form No.61 /61A/61B.
- 42(a) *Whether the assessee is required to furnish statement in Form No.61 or Form No.61A or Form 61B? (Yes/No)*
- (b) *If yes, please furnish :*
 - (i) Income Tax Department Reporting Entity ID No.;
 - (ii) Type of form;
 - (iii) Due date for furnishing
 - (iv) Date of furnishing, if any
 - (v) *Whether the Form contains information about all details/ furnished transactions which are required to be reported. If not, please furnish list of the details/transactions which are not reported.*

Insertion of Clause 44

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- New clause 44 provides for reporting of break-up of total expenditure of entities registered or not registered under the GST;
- 1) Total Expenditure
- 2) Expenditure in respect of GST registered entity:
 - a) Relating to goods or services exempt from GST
 - b) Relating to entities falling under composition scheme
 - c) Relating to other registered entities
- 3) Relating to other registered entities
- Expenditure relating to entities not registered under GST

Disclosure with regard to ICDS in Return of Income and TAR

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- In earlier ITR Forms, the net impact of ICDS on the profit & loss account was required to be reported in Part A of OI (Other Infor.)
- The new ITR forms require separate reporting of both profit & loss in Schedule OI, Schedule BP and Schedule ICDS, consequent to the amendments brought in by FA-2018 w.r.e.f 01-04-2018 with respect to S.36(1)(xviii)/40A(13)/43AA/43CB/145A/145B.
- ITR – 3/5/6.

Accounting Standards, Ind AS and ICDS

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- **Accounting Standards** – written and policy documents issued by the Government or Regulator body consisting of various aspects of accounting etc. in the books of accounts;
- **Ind AS** – a set of accounting standards (formulated by ICAI) notified by the Ministry of Corporate Affairs on 16/02/2015 which are in line with IFRS.
- **ICDS** – are the standards prescribed by the Govt. u/s 145(2) of the Act for computing the income under the head “PBG” or “IFOS”.
- AS /Ind AS – are for maintaining books of accounts, where, ICDS is for computation of income in ROI.

Background

- Ever since introduction of IT Act, there have been innumerable disputes;
- Computation of income based on accounts maintained by the Assessee subject to addition / disallowance under the scheme of the Act;
- With the introduction of ICDS, this position has significantly changed;

Some important aspects of ICDS

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- S.145 – method of accounting;
- S.145(1) – income chargeable under the head ‘PGBP’ and ‘IFOS’ shall, subject to sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly followed by the Assessee;
- S.145(2) empowers the Central Government to notify ICDS (vide amendment of FA, 2014);
- CG had notified 10 ICDS effective from 1st April, 2017;
- Applicable to all assesses (other than an individual or a Hindu undivided family who are not subject to tax audit under section 44AB of the said Act) for the purposes of computation of income chargeable to income-tax under the head “Profits and gains of business or profession” or “Income from other sources”.

- Constitutional validity of ICDS was challenged before the Delhi High Court in the case of **Chamber of Tax Consultants vs Union of India (2017) 87 taxmann.com 92 (Delhi)**.

ICDS or Income-tax Act ?

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- FAQ No. 2 – CBDT Circular No.2/2017 says that certain judicial pronouncements were pronounced in the absence of authoritative guidance on these issues under the Act and since certainty is now provided by notifying ICDS u/s 145(2), the provisions of ICDS shall be applicable to the transactional issues dealt therein in relation to AY 2017-18 and subsequent assessment years.
- Delhi HC struck down FAQ No.2.
- Delhi HC also struck down various provisions of ICDS I, II, III, IV, VI, VII, VIII and IX as conflicting with judicial precedents or as conflicting with S.145.

FAQ No.2 as *ultra vires*

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- S.145(2), as amended, has to be read down to restrict the power of Central Government to notify ICDS that do not seek to override binding judicial precedents or provisions of the Act;
- The power to enact a validation law is an essential legislative power that can be exercised, in the context of the Act, only by the Parliament and not by the executive;
- If S.145(2) of the Act as amended is not so read down it would be *ultra vires the Act* and Article 141 read with Articles 144 and 265 of the Constitution.

Finance Act, 2018 – amendments to validate provisions of ICDS

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- To overcome the judicial rulings conflicting with the provisions of ICDSs I, II, III, IV, VI, VII, VIII and IX, the Finance Act, 2018 made various amendments with retrospective effect from A.Y.2017-18;
- Insertion of new clause (xviii) of sub-section (1) of S.36;
- New clause (13) to S.40A;
- New Sections 43AA, 43CB and 145B;
- Substituted S.145A

ICDS - Disclosure requirement

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- Disclosure not in the books of accounts;
- Disclosure in the Return of Income and Tax Audit Report in tabular format.

Disclosure in Tax Audit Report – 3CD

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- Clause 13(d) – Whether any adjustment is required to be made to the profits or loss for complying with the provisions of ICDS notified u/s 145(2).
- Clause 13(e) – If answer to (d) above is Yes, give details of such adjustments :

| | Increase in Profit | Decrease in Profit | Net Effect |
|---------------------|--------------------|--------------------|------------|
| ICDS I | | | |
| ICDS II and onwards | | | |
| Total | | | |

□ Clause 13(f) – Disclosure as per ICDS

| S.No. | ICDS | Particulars |
|-------|------|--|
| 1. | I | Accounting Policies |
| 2. | II | Valuation of Inventories |
| 3. | III | Construction Contracts |
| 4. | IV | Revenue Recognition |
| 5. | V | Tangible Fixed Assets |
| 6. | VII | Government Grants |
| 7. | IX | Borrowing Costs |
| 8. | X | Provisions, Contingent Liabilities and Assets. |

Disclosure in Return of Income

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| Schedule | | Effect of ICDS on Profit | |
|----------|--|--------------------------|--------|
| Sl. No | ICDS | | Amount |
| (i) | (ii) | | (iii) |
| I | Accounting Policies | | |
| II | Valuation of Inventories | | |
| ... | | | |
| XI | Total Net Effect (I+II+III+.....+X) | | |

Clause 30A(a) – Secondary Adjustment

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- If primary adjustment to transfer price is made, then, following details are required to be furnished,
- (a) under which clause of S.92CE(1), primary adjustment is made;
- (b) Amount of primary adjustment;
- (c) whether the excess money available with the AE is required to be repatriated to India as per the S.92CE(2) ? (Yes / No);
- (d) If yes, whether the excess money has been repatriated within the prescribed time? (Yes/No)
- (e) If no, the amount of imputed interest income on such excess money which has not been repatriated within the prescribed time

Clause 30B(a)

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- Reporting regarding interest expenditure in pursuant to S.94B(1) of the Act;
- *Whether the assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding one crore rupees as referred to in sub-section (1) of section 94B? (Yes/No.)*
- If yes, then furnish following details :
 - Amount of expenditure;
 - EBITDA;
 - Amount of expenditure in excess of 30%;
 - Details of interest expenditure brought forward / carried forward.

CHALLENGES IN TAX AUDIT



- ICDS vis-à-vis Ind AS vis-à-vis Accounting Standards;
- Retrieval of GST related information and reporting the same in TAR;
- Collection and retaining of each and every information / documents which have been relied upon to prepare TAR and file ITRs;
- Obtaining reports of Merchant Bankers wherever it is required;
- Comparison with Stamp Value wherever the property is sold or purchased

ICAI guidelines – Tax Audit

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- Concept of materiality should be kept in mind;
- It's assessee's obligation to provide requisite books of accounts, information and documents required by the tax auditor;
- If not provided, then report and qualify the same;
- Working papers should also be obtained by the tax auditor about the evidences on which he has relied upon;
- Such as work done, who did the work, explanation and information received during audit, decisions taken on various points, reliance placed on judicial authorities etc.

- If there is difference in the opinion of tax auditor and the assessee, the tax auditor should state both the view points and also the relevant information;
- In computing the allowance / disallowance, the law applicable to the relevant year should be kept in mind.

CHALLENGES IN E-ASSESSMENT



E-Assessment – New Approach

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- **Election manifesto – 2014**
- The present Government promised to provide and establish system which would eliminate scope for corruption (to remove tax terrorism);
- And one way to doing this is to have technology-enabled e-Governance - minimizing discretion in the citizen-government interface, a system-based, policy-driven governance - making it transparent, and rationalizing and simplifying the tax regime

- **Tax Administration Reform Commission's recommendations vide their first report dated 30/05/2014**
- *“Hearing in all tax cases by personal presence should be avoided, and data can be sought through an e-system. The taxpayer can upload the data on the e-system, Personal hearing should be sought only in complex cases”*

E-mail based assessment

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- 2015 — F.No.225/267/2015-ITA — II dt. 19/10/2015;
- On pilot basis;
- Non Corporate Charge — Delhi, Mumbai, Bangaluru, Ahmedabad & Chennai;
- 2016 — F.No.225/267/2015-ITA.II dt. 23/05/2016 — Two more cities Hyderabad and Kolkata covered— for all assesseees;
- the concept of using email for corresponding with taxpayers and sending through emails the questionnaires, notice etc. at the time of scrutiny assessment.

S.282 – Service of Notice generally

- Sub-section (1) – service of a notice or summon or requisition or order or any other communication under the Act may be made by **delivering or transmitting a copy thereof**, to the person therein named.-
- (a) by post or by such courier services;
- (b) in such manner as provided Code of Civil Procedure;
- (c) in the form of any electronic record as provided in Info. Tech Act;
- (d) **by any other means of transmission of documents as provided by rules made by the Board.**

Rule 127 – Notified by Income-tax (18th Amendment) Rules, 2015.

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- Sub-clause (b) of Sub Rule (2) of Rule 127 stats that, for communication delivered or transmitted electronically,
- (a) email address available in the income-tax return furnished by the addressee to which the communication relates; or
- (b) email address available in the last income-tax returned furnished by the addressee, or
- (c) in the case of addressee being a company, email address of the company as available on the website of MoCA; or
- (d) any email address made available by the addressee to the income-tax authority or any person authorized by such income-tax authority.

- **Sub-Rule (3) to Rule 127** stats that the Principal DGIT (Systems) or the DGIT (Systems) shall specify the procedure, formats and standards for ensuring secured transmission of electronic communication and shall also be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to such communication.

Procedure, formats and standards etc. of elect. Comm. – Notification No.2/2016 dt. 03/02/2016.

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- Primary email for electronic communication – email as specified in income-tax return / last income-tax return / MoCA (in the case of a company);
- Assessee may furnish different email address for communication through a letter to AO, then the email address so provided shall be considered as Primary email. Otherwise primary email shall be email ID as provided in IT Return / MoCA website as above.

Migration from Email based assessment to E-proceedings

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- **Notification No.4/2017 Dt. 3/4/2017**
- The facility of electronic communication between the Department and the Assessee extended through “E-proceedings” functionality of the E-filing account of the Assessee on website.
- **Income Tax Business Application [ITBA]** - E-Proceedings offers the functionality for any Income Tax Authority to conduct various proceedings through online exchange of communication in form of notice/letters/questionnaire, issued from **ITBA** of the Department to the taxpayer account in the E-filing website and online response/submission from the Assessee in compliance with such notice/letters etc., through E-proceedings in the E-filing website.

Time barring assessment on 31/12/2017

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- Instruction No.8/2017 Dt. 29/09/2017
- In seven metro cities, the time-barring assessment were migrated to the E-proceedings on the intimation issued by the AO by 8th October, 2017
- In other cities, in respect of pending time-barring ‘Limited Scrutiny’ cases where the Principal CIT are located, an option was made available to the Assessee to opt for E-proceedings.

E-proceedings now onwards – Instruction No.01 /2018

Dt.12/02/18

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- CBDT direction :
- Except for search related assessment, proceedings in other pending scrutiny assessment cases shall be conducted only through 'E-proceedings' functionality in ITBA/E-filing;
- In cases, where assessee objects to conduct E-proceedings, such cases, for the time-being, may be kept on hold.

Exceptions from E-proceedings

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- In assessment proceedings being carried out through 'E-proceedings' facility, a particular proceeding may take place manually in following situations :
- (a) where manual books of accounts or original document have to be examined;
- (b) where AO invokes S.131 of the Act or a notice is issued for carrying out third party inquiries / investigations;
- (c) where examination of witness is required to be made by the concerned assessee or the department;
- (d) where a **SCN** contemplating any adverse view is issued by the AO and **assessee requests** for personal hearing to explain the matter.

Important Procedural aspects in conducting E-proceedings

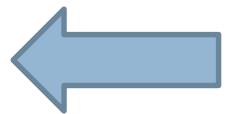
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- **A. Enquiry before assessment – S.142(1)(ii) –**
- (a) Notice shall be issued electronically and delivered upon the assessee in ‘E-filing’ account;
- (b) while filing response electronically, the concerned assessee shall verify it in the manner prescribed under Rule 14 of the Rules.

Rule 14

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- “I declare that to the best of my knowledge and belief, the information furnished in the statement / statements is correct and complete and other particulars shown therein are truly stated.”



- **B. Time for compliance :**
- Online submission may be filed till the office hours on the date stipulated for compliance.

- **C. Availability of e-submission facility in time barring situation or where case has been finally heard by the AO :**

- (a) time-barring date - e-submission facility through 'E-proceedings' shall automatically be closed 7 days before the time barring date;

- (b) in other situations - upon completion of proceedings, before passing the final order, concerned AO, on his volition, shall close the e-submissions facility after mentioning in electronic order sheet that 'hearing has been concluded'.

Amendments by FA, 2018.

- FM in the budget speech said that they are now ready to roll out the **E-assessment across the country**, which will transform the age-old assessment procedure of income tax department and the manner in which they interact with taxpayers and other stakeholders.
- Therefore, amendments proposed to notify a new scheme for assessment where the assessment would be done in electronic mode which will **almost eliminate person to person contact leading to greater efficiency and transparency.**

Sub-section (3A)/(3B)/(3C) to S.143 of the Act – inserted by FA, 2018 w.e.f 01-04-2018.

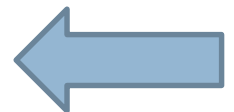
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- (3A) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of **making assessment of total income or loss** of the assessee under sub-section (3) so as to **impart greater efficiency, transparency and accountability** by—
 - (a) eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the **extent technologically feasible**;
 - (b) optimising utilisation of the resources through economies of scale and **functional specialisation**;
 - (c) introducing a **team-based assessment with dynamic jurisdiction**.

efficiency, transparency and accountability

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- Efficiency : time, energy will be saved,
- Transparency : the entire assessment proceedings will be available on 'E-proceedings' tab of E-filing account of the assessee;
- Accountability : AO can't ignore the submissions, evidences and documents placed on 'E-proceedings' tab of E-filing account of the assessee. (very helpful in case of reopening / revision)



extent technologically feasible

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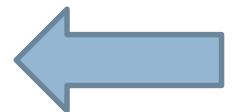
- It will eliminate the interface between AO and the Assessee to the extent technologically feasible.
- Need be, one to one personal hearing may be granted, where the purpose cannot be served through technology or where technology is not available.



functional specialisation

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- Meaning of functional specialization : specialized or dedicated income-tax officers qua different provisions of the Act;
- For example –
 - (a) reference to transfer pricing officers – S.92CA
 - (b) reference to Pr. CIT with regard to Chapter X-A (General Anti-Avoidance Rules) – S.144BA
 - (c) reference to Dispute Resolution Panel – S.144C
 - (d) reference to Valuation Officer – S.50C
 - Etc.



team-based assessment with dynamic jurisdiction

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- Clause (c) to sub-section (3A) to S.143 of the Act talks about introduction of ‘team-based assessment with dynamic jurisdiction’ and not ‘jurisdiction-free assessment’;
- ‘team-based assessment with dynamic jurisdiction’ would mean that the assessment will be framed by the AO (jurisdictional) alongwith other AO.
- ‘jurisdiction-free assessment’ would mean that the assessee’s jurisdiction is Ahmedabad but the assessment is framed by the AO having Mumbai jurisdiction. However, in order to have such kind of assessment, corresponding amendments are required in the provisions of S.120 – Jurisdiction of Income-tax authorities, S.124 – Jurisdiction of Assessing Officer, S.127 – Powers of transfer cases, or Board needs to issue notification every time for every assessee for their jurisdiction for the purpose of assessment.

- S.143(2) – Statutory notice – to be issued by the Assessing Officer;
- S.143(3) – Assessment Order to be passed by the Assessing Officer;
- S.144 – Best judgment order to be passed by the Assessing Officer;
- S.148 – issuance of notice for reopening by the Assessing Officer;
- S.147 – framing of reassessment order on the basis of ‘reason to believe’ of escapement of income by the Assessing Officer.
- So and so forth

S.2(7A) – Assessing Officer

- **“Assessing Officer”** means the Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director or the Income-tax Officer who is **vested with the relevant jurisdiction** by virtue of directors or orders issued under **sub-section (1) or sub-section (2) of section 120** or any other provision of this Act, **and** Additional Commissioner or Additional Director or Joint Commissioner or Joint Director who is **directed under clause (b) of sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer** under this Act.

- Until and unless, the Assessing Officer has been vested with the relevant jurisdiction under sub-section (1)/(2)/(4) of S.120 of the Act, the AO cannot assume any jurisdiction which has not been vested with him as per the provisions of S.120 of the Act.
- Therefore, in order to make ‘team-based assessment with dynamic jurisdiction’ as envisaged in provisions of S.143(3A) of the Act, suitable notification is required from the Board and / or suitable amendments are required in the Statute.

Sub-section (3B) to S.143

- (3B) *The Central Government may, for the purpose of giving effect to the scheme made under sub-section (3A), by notification in the Official Gazette, **direct that any of the provisions of this Act relating to assessment of total income or loss shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:***
- *Provided that **no direction shall be issued after the 31st day of March 2020.***

Sub-section (3C) to S.143

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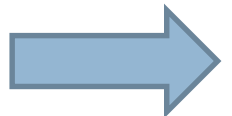
- (3C) *Every notification issued under sub-section (3A) and sub-section (3B) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.*

'E-proceedings' - challenges

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- **1. Validity of Statutory notice u/s 143(2) –**
- **Point No.13(a) of the Notification No.4/2017 dt. 03/04/2017 says that all notices will be visible to Assessee after login under “E-proceedings” Tab in the E-filing website of the department and may also be sent to the registered e-mail address of the Assessee.**
- Is notice u/s 143(2) not sent to the registered e-mail address of the assessee but is visible on E-filing website at 'E-proceedings' tab valid?

- **S.143(2)** of the Act requires **service of notice** to Assessee;
- **S.282(1)(c)** of the Act provides that the service of notice may be made by **delivering or transmitting a copy** thereof, in the form of **any electronic record as provided in Chapter – IV of the Information Technology Act, 2000;**
- **S.13 in Chapter – IV of the Inf. Tec. Act** provides for time and place of dispatch and receipt of electronic record.
- Point No.13(n) of Not. No.4/2017 provides that the registered account of the assessee on the e-filing website is deemed to be computer resource designated by the assessee in accordance with S.13 of the Inf. Tech. Act, 2000.



S.13 of Inf. Tech Act, 2000.

- **Time and dispatch** of electronic record (notice) from originator (AO) – occurs when it enters a computer resource outside the control of the originator;
- **Time of receipt of electronic record (notice) in the case of addressee (Addressee) –**
- (a) if the addressee has designated a computer resource for the purpose of receiving electronic records,—
- (i) receipt occurs at the time when the electronic record enters the designated computer resource; or
- (ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;
- (b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.




Notice is transmitted by AO
on 29/09/2018.



Notice is found visible on
registered account of the
assessee on E-filing
website in 'E-Proceedings'
tab on 29/09/2018.

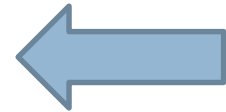
- Who shall keep check whether notice etc. has been served on registered account of the assessee on e-filing website or registered email-id of the assessee?
- For that matter, any statutory notice, any procedural notice or any order;
- This will increase burden and responsibility of the practitioner who generally access the registered account of the assessee on e-filing website for filing return of income and / or who provides their own / office email-id as registered email-id of the assessee while filing return of income.
- Recently the SC in the case of **ITO vs. Dharam Narain 90 taxmann.com 325** has held that **Service of scrutiny notice on authorized representative of assessee on ground of non-availability of assessee is deemed service of notice on assessee and sufficient compliance of requirement of section 143(2)**

- **2. Whether the assessee does not have the facility to appoint authorized representative?**
- In this E-Proceedings, personal attendance of the Assessee is not required, and therefore, there is not a case of Authorized Representative appearing before the AO in E-Proceedings.
- Refer S.288 of the Act.
- However, looking into the complexities of the provisions of the Income-tax Act and evolving law day by day, it is always in the benefit of the interest of the assessee in appointing consultant for the purpose of preparing written submission and paper-book for submitting the same on the registered account of the assessee on E-filing.
- However, where a SCN contemplating any adverse view is issued and assessee requests for personal hearing to explain the matter, and the personal hearing is granted, at that time, the assessee would have facility to appoint AR to  hearing on behalf of the Assessee.

S.288 – Appearance by AR.

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- “Any assessee who is entitled or required to attend before any proceedings under this Act....., may, subject to the other provisions of this section, attend by an authorized representative.”



- **3. Furnishing submission and documents on stipulated date.**
- Advisable to submit submission alongwith supporting documents and evidence on a stipulated date.
- If it cannot be submitted, then at least file request letter to furnish required details on later date.
- Since personal hearing is absent, the submission and required document should be furnished in a manner that the AO accept and understand the same appropriately.

- **4. Would the submission and documents be accepted after office hours on stipulated date?**
- Para 5.4 of the Instruction No.8/2017 says that “Online submissions may be filed till the office hours on the date stipulated for compliance.”
- However, the Annexure-C appended to such Instruction says that the E-proceedings would provide 24X7 anytime/anywhere convenience to submit response to the Departmental queries in course of assessment proceedings.
- Practically also it is seen that right now the assessee is in a position to furnish response even after the stipulated date.

- **5. Can online submission be made till last date of time-barring assessment?**
- Para 5.5 of the Instruction No.8/2017 and Para 4.4 of the Instruction No.1/2018 provides that the facility of electronic submission of documents through **'E-Proceedings' shall be automatically closed 7 days before the time barring date.**

- **6. Can submission be furnished once the hearing has been concluded?**
- Para 5.5 of the Instruction No.8/2017 and Para 4.4 of the Instruction No.1/2018 provides that the concerned AO, on his volition, upon the completion of proceedings, before passing the final order, shall close the e-submission facility after mentioning in electronic order sheet that 'hearing has been concluded.'
- However, **in exceptional cases**, the concerned AO may enable further filing of submissions **electronically** under intimation to the Range Head of ITBA.

- You may raise your own question on ankittalsania@gmail.com

Thank You

Advocate Ankit Talsania

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