Direct taxes updates

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V.K.Subramani, Erode
vksoffice99@gmail.com

1. One-time relaxation for verification of income-tax returns of assessment years 2015-16 to 2019-20 due to non-filing of ITR-V: In **Circular No.13** /2020 dated 13.7.2020 the CBDT has issued a beneficial circular. In respect of an Income-tax Return (ITR) which is filed electronically without a digital signature, the taxpayer is required to verify it using any one of the following modes within the time limit of 120 days from date of uploading the ITR Viz; (i)Through Aadhaar OTP;(ii) By logging into e-filing account through net banking;(iii) EVC through Bank Account Number; (iv) EVC through Demat Account Number; (v)EVC through Bank ATM; and (v) By sending a duly signed physical copy of ITR-V through post to the CPC, Bengaluru.

The CBDT took note of the fact that a large number of electronically filed ITRs still remain pending with the Income-tax Department for want of receipt of a valid ITR-V Form at CPC, Bengaluru from the taxpayers concerned. In law, consequences of non-filing the ITR-V within the time allowed is significant as such a return is /can be declared Non-est in law, thereafter, all the consequences for non-filing a tax return, as specified in the Income-tax Act, 1961 would follow. It accordingly decided that as a one-time measure for resolving the grievances of the taxpayers associated with non-filing of ITR-V for earlier Assessment Years and to regularize such returns which have either become Non-est or have remained pending due to non-filing/non-receipt of respective ITR-V Form, the CBDT, in exercise of powers under section 119 of the Act, in case of returns for Assessment Years 2015-16, 2016-17, 2017-18. 2018-19 and 2019-20 which were uploaded electronically by the taxpayer within the time allowed under section 139 of the Act and which have remained incomplete due to non-submission of ITR-V for verification, hereby permits verification of such returns either by sending a duly signed physical copy of ITR-V to CPC, Bengaluru through speed post or through EVC/OTP modes as listed in para 1 above. Such verification process must be completed by 30-9-2020.

However, this relaxation shall not apply in those cases, where during the intervening period, Income-tax 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.

Further, CBDT, also relaxes the time-frame for issuing the intimation as provided in second proviso to sub-section (1) of Section 143 of the Act and directs that such returns shall be processed by 31-12-2020 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 case the taxpayer concerned does not get his return regularized by furnishing a valid verification (either ITR-V or EVC/OTP) by 30-9-2020, necessary consequences as provided in law for non-filing the return may follow.

2. Clarification in relation to notification issued clause (v) of proviso to section 194N prior to its amendment by the Finance Act, 2020: The CBDT in **Circular No.14 /2020** dated 20th July, 2020 has issued a circular which is clarificatory in nature. Section 194N of the Act as inserted by Finance (No. 2) Act 2019 provided for deduction of tax at source on payment made by a banking company, a co-operative society engaged in the business of banking or post office, in cash to a recipient exceeding Rs. 1 crore in aggregate during a financial year from one or more account maintained by such recipient. Clause (v) of proviso to the said section had empowered the Central Government, in consultation with the Reserve Bank of India (RBI), to exempt by way of notification in Official Gazette, persons or class of persons so that payments made to such persons or class of persons shall not be subjected to TDS under this section. Accordingly, in exercise of the said power, Central Government has issued three notifications which are as under: *(a) Notification 68 of 2019 dated 18.09.2019:* Cash Replenishment Agencies (CRAs) and franchise agents of white Label Automated Teller Machine Operators (W4TMOS) for the purpose of replenishing cash in ATMS operated by these entities subject to conditions mentioned in the said notification.(b) Notification 70 of 2019 dated 20.09.3019: Commission agent or trader operating under Agriculture Produce market Committee (APMC) and registered under any law relating to Agriculture Produce Market of the concerned State have been exempted subject to conditions specified in the said notification.(c) Notification 80 of 2019 dated I5.10.2019: The authorized dealer and its franchise agent and sub-agent and Full Fledged Money Changer (FFMC) licensed by the Reserve Bank of India and its franchise agent for the purposes of,-Purchase of foreign currency from foreign tourists or non-residents visiting India or from resident Indians on their return to India, in cash as per the directions or guidelines issued by Reserve Bank of India; or Disbursement of inward remittances to the recipient beneficiaries in India in cash under Money Transfer Service Scheme (MTSS) of the Reserve Bank of India; and subject to the conditions specified in the said notification.

Section 194N of the Act was amended by the Finance Act, 2020 in order to make the provisions of the said section more stringent for non ITR filers. It is to note that the clause (v) of the proviso to section 194N prior to its amendment has now become fourth proviso to the said section. Representations have been received seeking clarification regarding the validity of the above mentioned notifications in light of the amendments carried out by Finance Act, 2020.The matter has been examined by the Board and it is hereby clarified that the above mentioned three notifications shall be deemed to be issued under fourth proviso to section 194N as amended by the Finance Act, 2020. It is further reiterated that the exemption allowed under the said notifications shall be subject to the conditions laid down therein.

3. Exemption in the case of employees opting section 115BAC from the assessment year 2021-22 onwards: The CBDT in Notification No.G.S.R. 415(E) dated 26.06.2020 in exercise of the powers conferred by section 115BAC (2) read with section 295 has amended rule 2BB by inserting sub-rule (3) and has inserted further proviso after the proviso in clause (iii) in sub-rule (7) of rule 3 by means of Income-tax (Thirteenth Amendment) rules,2020.

The following allowances are eligible for exemption under section 10(14): (a) any allowance granted to meet the cost of travel on tour or on transfer ; (b) any allowance ,whether, granted on tour or for the period of journey in connection with transfer, to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty; and (c) any allowance granted to meet the expenditure incurred on conveyance in performance of duties of an office or employment of profit. Provided no free conveyance is provided by the employer for (c) above.

At serial no.11 of the table below sub-rule (2) "to the extent and subject to the conditions , if any, specified therein". Serial no.11 deals with transport allowance granted to an employee who is blind or deaf and dumb or orthopaedically handicapped with disability of lower extremities, to meet his expenditure for the purpose of commuting between the place of residence and place of duty. Thus, in such cases subject to the conditions it is eligible for exemption even in the case of those employees who have opted for section 115BAC for the assessment year 2021-22 or any subsequent year(s).

In rule 3, in sub-rule (7), in clause (*iii*), after the proviso, a further proviso shall be inserted. This is meant to deny the exemption provided in the first proviso in respect of free food and non- alcoholic beverage provided by such employer through paid voucher. Thus free food and non-alcoholic provided during office hours shall be considered as taxable perquisite in the case of an employee, being an assessee, who has exercised option under sub-section (5) of section 115BAC.

4. Instruction for processing of returns with refund claims under section 143(1) beyond the prescribed time limits in non-scrutiny cases: The CBDT in Circular F.No.225/98/2000/ITA-II dated 10.7.2020 took notice of the fact that due to certain technical issues or for other reasons not attributable to the assessees concerned, several returns for various assessment years up to the assessment year 2017-18 which were otherwise filed validly under section 139 or 142 or 119 of the Income-tax Act 1961 could not be processed under sub-section (1) of section 143 of the Act. Consequently, intimation regarding processing of such returns could not be sent within the period of one year from the end of the financial year in which such returns were filed as prescribed in the second proviso to sub-section (1) of section 143 of the Act. This has led to a situation where the taxpayer is unable to get his legitimate refund in accordance with provisions of the Act, although the delay is not attributable to him.

To resolve the grievances of such taxpayers, Board had earlier issued instructions/orders under section 119 of the Act from time to time relaxing the prescribed statutory time limit

for processing of such validly filed returns with refund claims in non-scrutiny cases. As per the latest order dated 5th August, 2019, time frame was given till **31-12-2019** to process such returns with refund claims.

The matter has been re-considered by Board in view of pending taxpayers' grievances related to issue of refund. To mitigate genuine hardship being faced by the taxpayers on this issue, Board, by virtue of its powers under section 119 of the Act, hereby relaxes the time-frame prescribed in second proviso to sub-section (1) of section 143 and directs that all validly filed returns up to assessment year **2017-18** with refund claims, which could not be processed under sub-section (1) of section 143 of the Act and which have become time-barred, subject to the exceptions mentioned in para below, can be processed now with prior administrative approval of Pr.CCIT/CCIT concerned and intimation of such processing under sub-section (1) of section 143 of the Act can be sent to the assessee concerned by **31-10-2020.** All subsequent effects under the Act including issue of refund shall also follow as per the prescribed procedures. To ensure adequate safeguards, it has been decided that once administrative approval is accorded by the Pr.CCIT/CCIT, the Pr.CIT/CIT concerned would make a reference to the Pr.DGIT(Systems) to provide necessary enablement to the Assessing Officer on a case to case basis.

The relaxation accorded above **shall not be applicable** to the following returns:

(*a*) returns selected in scrutiny;

(*b*) returns remain unprocessed, where either demand is shown as payable in the return or is likely to arise after processing it;

(*c*) returns which remain unprocessed for any reason attributable to the assessee.

5. Effect of amendment of section 40(a)(ia) by Finance Act, 2012 is retrospectively applicable: In CIT v. S.M.Anand (2020) 422 ITR 209 (Karn) the substantial question of law before the court was, whether the second proviso to section 40(a)(ia) inserted by the Finance Act,2012 is retrospectively applicable right from the date of insertion of the section. The second proviso provides relief to the payer of disallowance under the said section if the payee has paid tax on that income. The court citing apex court decision in the case of CIT v. Vatika Township (P) Ltd (2014) 367 ITR 466 (SC) held that the second proviso to section 40(a)(ia) is retrospectively applicable. Thus when the payee has paid tax, the disallowance envisaged by section 40(a)(ia) would not apply. The Revenue may ask the payer to pay interest for the delay in depositing tax. The period of delay would be the normal date of tax deduction and up to the date of payment of tax by the payee.

6. When the assessee has discharged his onus of proof, the Revenue must rebut such view to levy tax or penalty: In Adithiya Gears Ltd v. Asst.CIT (2020) 422 ITR 218 (Mad) the assessee obtained unsecured loan of Rs.4.10 lakhs. The amounts were received from the managing director, paternal uncle of the managing director and a family friend of the managing director.

The managing director and his Chartered Accountant appeared before the AO for hearing and produced affidavit for the loan accepted by the company during the year. The court found that there was no examination of the affidavits or cross-examination by the AO. The appellate authority who has co-extensive powers also did not undertake the exercise. Hence, the case was remanded to the AO for doing the same and arrive at the findings afresh.

7. For granting stay of tax recovery, the assessing authority must consider even conflicting tribunal decisions: In General Insurance Corporation of India v. Asst.CIT (2020) 422 ITR 248 (Mad) the court summarized the principles that are to be applied while considering stay petition for recovery of tax. It cited CBDT Circular No.530, dated March6, 1989 where it was stated that stay of demand has to be granted where there are conflicting decisions of the High Court. It stated that this principle must be extended to conflicting decisions of the different Benches of the Tribunal.

8. Purchase of tendu leaves and the acts of drying, sprinkling water, sorting, screening and handling did not amount to "manufacture" or "process": In Gondia Beedi Leaves Contractors Association v. Union of India (2010) 422 ITR 404 (Bom) the assessee a society registered under Societies Registration Act, 1860 consisting of members who procured tendu leaves from Forest Department and sold the same to bidi manufacturers. The issue was whether tax collection at source provisions are applicable and thus has to be collected from them. The assessee claimed that they sprinkle water for maintaining moisture, do sorting and screening of leaves, bundling them, keeping in godown. It was claimed that the tendu leaves were not traded as such but were processed before sale. The court held that section 206C (1A) will not apply as the activity did not amount to manufacturing, processing or producing articles or things. The activities were in the nature of trading in tendu leaves and hence covered by section 206C.