
S.K.TYAGI	☎ Office : (020) 26133012	Flat No.2, (First floor)
M.Sc., L.L.B., Advocate	: (020) 40024949	Gurudatta Avenue
Ex-Indian Revenue Service	Residence : (020) 40044332	Popular Heights Road
Income-Tax Advisor	Email : sktyagidt@airtelmail.in	Koregaon Park
		PUNE-411 001

OPINION

Shri A, Manager – Finance and Accounts, M/s X Y Z Ltd., has requested for an opinion regarding the digital signatory on return of income in case of a company. The aforesaid opinion is sought in view of the recent Notification No.49/2010, dt. 9.7.2010, issued by the Central Board of Direct Taxes (CBDT). [325 ITR (St) 33].

In respect of the aforesaid Notification, the following two queries have been raised :

- (i) Who is the digital signatory in case of the return of income of a company.
- (ii) Can the Financial Controller of a company also be a digital signatory in case of a company.

In order to answer the aforesaid queries, it will be necessary to refer to the relevant provisions of the Income-Tax Act, 1961 (the Act), the Income-Tax Rules, 1962 (the Rules) and the aforesaid Notification issued by the CBDT. The same are discussed as follows :

1. Section 140 – Return by whom to be signed

Section 140 of the Act specifies the person who is authorized to sign the return of income in the case of different categories of tax-payers. In the case of a company, clause (c) of section 140 of the Act is relevant, which is reproduced as follows :

Return by whom to be signed

140. The return under section 115WD or section 139 shall be signed and verified—

- (c) in the case of a company, by the managing director thereof, or where for any unavoidable reason such managing director is not able to sign and verify the return, or where there is no managing director, by any director thereof :*

Provided that where the company is not resident in India, the return may be signed and verified by a person who holds a valid power of attorney from such company to do so, which shall be attached to the return:

Provided further that,—

- (a) where the company is being wound up, whether under the orders of a court or otherwise, or where any person has been appointed as the receiver of any assets of*

the company, the return shall be signed and verified by the liquidator referred to in sub-section (1) of section 178;

- (b) where the management of the company has been taken over by the Central Government or any State Government under any law, the return of the company shall be signed and verified by the principal officer thereof.*

From the aforesaid provisions of section 140(c), it may be seen that the return of income in case of a company is to be signed and verified by the Managing Director of the company. If there is no Managing Director or for any unavoidable reason the Managing Director is not able to sign and verify the return of income, any Director of the company can comply with the requirement. As regards a foreign company, the return of income may be signed and verified by a person who holds a valid power of attorney from such company to do so.

2. Rule 12 – Return of income and return of fringe benefits

Rule 12 of the Rules deals with the procedure for the filing of the return of income and the return of fringe benefits. In the present context, sub-rule (3) of rule 12 is relevant which is reproduced as follows :

Return of income and return of fringe benefits

12(3) The return of income or return of fringe benefits referred to in sub-rule (1) may be furnished in any of the following manners, namely:—

- (i) furnishing the return in a paper form;*
- (ii) furnishing the return electronically under digital signature;*
- (iii) transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V;*
- (iv) furnishing a bar-coded return in a paper form:*

Provided that—

- (a) a firm required to furnish the return in Form ITR-5 and to whom provisions of section 44AB are applicable or a company required to furnish the return in Form ITR-6 shall furnish the return in the manner specified in clause (ii) or clause (iii);*
 - (b) a person required to furnish the return in Form ITR-7 shall furnish the return in the manner specified in clause (i).*
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As per the current system, a return of income filed electronically without digital signature is required to be followed up with the signed verification which is to be sent by ordinary post to the Centralized Processing Centre of the Tax Authority at Bengaluru within a period of 120 days from the date of e-filing.

3. Notification No.49/2010, dt.9.7.2010

The CBDT, has issued Notification No.49/2010, dt.9.7.2010, which has substituted clause (a) of the proviso to rule 12(3) of the Rules.

Vide the aforesaid Notification, the present clause (a) of the proviso to rule 12(3), shall be substituted by the following clauses:

“ (a) a firm required to furnish the return in Form ITR-5 and to whom provisions of section 44AB are applicable shall furnish the return in the manner specified in clause (ii) or clause (iii);

(aa) an individual or HUF required to furnish the return in Form ITR-4 and to whom provisions of section 44AB are applicable shall furnish the return for Assessment Year 2010-11 and subsequent Assessment Years in the manner specified in clause (ii) or clause (iii);

(ab) a company required to furnish the return in Form ITR-6 shall furnish the return for Assessment Year 2010-11 and subsequent Assessment Years in the manner specified in clause (ii).”

From the aforesaid clause (ab), read with rule 12(3)(ii) of the Rules, it may be seen that a company is required to furnish the return in Form ITR-6, electronically, under digital signature, for the assessment year (AY) 2010-11 and subsequent AYs.

In other words, the aforesaid amendment of rule 12(3) necessitates that the return of income of a company should be uploaded with digital signature.

4. Conclusion

In the light of the discussion in the aforesaid para (1), regarding the provisions of section 140 of the Act, it is clear that in the case of a company, the return of income is to be signed by the Managing Director thereof or where for any unavoidable reason the Managing Director is not able to sign and verify the return of income, or where there is no Managing Director, any Director of the company can sign and verify the return of income.

As regards the provisions relating to the signing of the return of income in the case of a company, as laid down under section 140(c), there has been no change in respect thereof.

The compliance with digital signature would reduce the time involved in the process because under this mode there will be no need to send a hard copy of verification to the Tax Authority, by post.

In the light of the aforesaid discussion, the aforesaid queries are answered as follows :

- (i) In the case of a company, it is the Managing Director of the company who will be digital signatory. However, in case there is no Managing Director or for any unavoidable reason the Managing Director is not able to sign and verify the return of income, any Director of the company may be the digital signatory.
- (ii) Any person other than the Managing Director or the Director of a company is not authorized to be a digital signatory. It implies that the Financial Controller of a company cannot be a digital signatory for the purpose of filing the return of income of a company electronically.

Both the aforesaid queries stand answered, accordingly.

Place : Pune

Date : 28.8.2010

(S.K. Tyagi)

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