

Note – TDS mismatch and adjustment of erroneous arrears – Intimation under section 143(1) by CPC

This Note deals with the intimations issued by the Centralized Processing Centre (CPC), under section 143(1) of the Income-Tax Act, 1961 (the Act), in respect of returns of income electronically filed. It has been observed that many of the intimations under section 143(1) of the Act, contain a number of errors which cause un-called for harassment and inconvenience to the assesseees. Mainly, there are two types of errors noticed in the intimations under section 143(1) of the Act, issued by the CPC, which are as follows :

- (i) In view of TDS mismatch, proper credit is not given in respect of the TDS which results in incorrect amount of refund.
- (ii) Erroneous arrears of I.T. demands are adjusted against the refund due to the assessee in view of erroneous pending I.T. demands, uploaded by the Assessing Officers (AOs).

In view of the harassment and inconvenience caused to the assesseees, on account of the aforesaid reasons, the Hon. Delhi High Court took notice of the aforesaid matter on its own and thereafter, All India Federation of Tax Practitioners also filed a writ petition in respect of the above matter. As a result, the Hon. Delhi High Court has issued seven mandamuses for necessary action by the Income-tax Department. The aforesaid judgement is reported in *Court On Its Own Motion Vs CIT [2013] 352 ITR 273 (Del)*.

As a consequence of the directions given to the I.T. Department and the Central Board of Direct Taxes (CBDT) by the Hon. Delhi High Court, the CBDT has issued Circular / Instruction Nos. 5, 6 and 7 of 2013, dt. 8.7.2013, 10.7.2013, and 15.7.2013, respectively. All the aforesaid Circulars / Instructions are reported in 356 ITR (St) pp. 2, 4 and 6, respectively.

The aforesaid Circulars / Instructions are briefly discussed as follows :

1. Circular / Instruction No.5 of 2013, dt.8.7.2013

This Circular / Instruction relates to errors in the intimations under section 143(1) of the Act on account of TDS mismatch.

Vide para (3) of the aforesaid Circular / Instruction, the Board has directed that when an assessee approaches the Assessing Officer (AO) with requisite details and particulars in the form of TDS certificate, as an evidence against mismatched amount, the said AO will verify whether or not the tax-deductor has made payment of TDS in the Government Account and if the payment has been made, credit of the same should be given to the assessee.

2. Circular / Instruction No.6 of 2013, dt.10.7.2013

This Circular / Instruction relates to adjustment of erroneous arrears against the refund due to the assessee without following the procedure laid down under section 245 of the Act. In this regard, paras 26, 27 and 28 of the aforesaid judgement of Delhi High Court have been reproduced in para (2) of the aforesaid Circular / Instruction. For the sake of ready reference, the same are reproduced hereinafter.

26. *In spite of the opportunity given to the Revenue to take steps, prescribe, adopt a just procedure, to correct the records, etc., nothing has been done and they have not taken any decision or steps. The affidavits filed subsequently after 31st August, 2012, are silent on this specific point. In these circumstances, we direct and issue the third mandamus and direction which will be applicable only to cases where returns have been processed by the CPC, Bengaluru and refunds have been fully or partly adjusted against the past arrears while passing or communicating the order under section 143(1) of the Act, without following the procedure under section 245 of the Act. In such cases, it is directed that :*

- A. *All such cases will be transferred to the Assessing Officers;*
- B. *The Assessing Officers will issue notice to the assessee which will be served as per the procedure prescribed under the Act ;*
- C. *The assesseees will be entitled to file response / reply to the notice seeking adjustment of refund ;*
- D. *After considering the reply, if any, the Assessing Officers will pass an order under section 245 of the Act permitting or allowing the refund;*
- E. *The Board will fix time limit and schedule for completing the said process.*

27. *There are three reasons why we have issued the said direction. Firstly, the respondents accept and admit the position that wrong and incorrect demands have been uploaded in the CPC, Bengaluru. Secondly, the respondents have not followed the mandate and requirement of section 245 of the Act before making the adjustment. The two stage process with the opportunity and right of the assessee to submit a reply before the adjustment is made, has been denied. The CPC, Bengaluru did not entertain or accept any application of the assessee questioning past arrears uploaded in their system as they are not custodian of past records. The CPC, Bengaluru entertain on-line applications but do not entertain physical or hard copy applications. The Assessing Officer similarly did not entertain any application by the assessee on the ground that the*

order under section 143(1) was passed by the CPC, Bengaluru and they do not have the files / return with them. Thus, the problem was created and caused by the respondents who did not realize the effect and impact of incorrect and wrong arrears being uploaded in CPC, Bengaluru and did not follow the statutory requirements of section 245 of the Act.

28. *We clarify that the aforesaid directions are only applicable to cases where two stage procedure under section 245 of the Act has not been followed and not to cases where procedure under section 245 of the Act was followed.*

From the aforesaid part of the judgement, it may be seen in para 26 thereof, the Hon. High Court has issued five directions, A, B, C, D and E. The aforesaid directions have to be followed by the Assessing Officers so that the erroneous arrears of demand adjusted in the intimations under section 143(1) of the Act are corrected / rectified and the correct refund due to the assessee is granted to him.

3. Circular / Instruction No.7 of 2013, dt.15.7.2013

This Circular / Instruction relates to payment of interest under section 244A of the Act where the assessee is not at fault.

It must be emphasized here that in the light of the directions contained in the aforesaid Circulars / Instructions issued by the CBDT, it is now incumbent upon the Assessing Officers to look into all the aforesaid mistakes and rectify the same so as to redress the genuine grievances of the assesseees in respect of the aforesaid issues, at the earliest.

In view of the aforesaid reasons, an assessee may now approach the AO for rectification of any mistake in the Intimation under section 143(1) of the Act and the AO will be duty bound to entertain such a request and also, thereafter, take the necessary remedial action, at the earliest.

Place : Pune

Date : 27.8.2013

(S.K. Tyagi)

sf