

DESAI SAKSENA & ASSOCIATES

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Friday Tax Alert

From:

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CBDT rolls out Dispute Resolution Scheme (E-DRS), 2022

- To Minimise Litigation -Dispute Resolution Committees (DRCS) Constituted in all 18 Jurisdictional Pr. CCIT Regions across the Country.
- As per E-DRS, a taxpayer can Opt for E-Dispute Resolution against the 'Specified Order' under certain conditions
- E-DRS application must be filed within one month from date of receipt of specified order
- If appeal is pending, E-DRS application is to be filed on or before 30-9-2024

In pursuance of section 245MA in the Income-tax Act, 1961 (hereinafter referred to as "the Act"), the Central Board of Direct Taxes (CBDT) had notified the e-Dispute Resolution Scheme, 2022 (e-DRS) with the aim to reduce litigation and provide relief to eligible taxpayers. Section 245MA of the Act also provides for the constitution of Dispute Resolution Committees (DRC).

As per e-DRS, a taxpayer can opt for e-Dispute Resolution against the 'specified order' as defined in clause (b) of the Explanation to section 245MA of the Act, which includes an order in which the aggregate sum of variations proposed or made does not exceed Rs.10 lakh and returned income for the relevant assessment year does not exceed Rs. 50 lakhs. Further, such order should not be based on search/surveys or information received under an agreement referred to under section 90 or 90A of the Act.

According to e-DRS, a DRC may make modification to the variations in the specified order and decide to grant reduction/waiver of penalty and prosecution in accordance with the provision of rule 44DAC of the Income-tax Rules, 1962 (hereinafter referred to as "the Rules"). The DRC is mandated to pass its order within six months from the end of month in which application for dispute resolution is admitted by it.

The application for e-DRS is to be filed in Form No. 34BC referred in rule 44DAB of the Rules, on the e-filing portal of the Income Tax Department, within one month from the date of receipt of specified order. In cases where appeal has already been filed and is pending before the Commissioner of Income-tax (Appeals), the application for e-DRS, is to be filed on or before 30-09-2024. In cases where the specified order has been passed on or before 31.08.2024 and the time for filing appeal against such order before CIT (Appeals) has not lapsed, the application for dispute resolution can be filed on or before 30.09.2024.

This is another initiative by the Government towards minimising litigation.

Press Release dated 30.08.2024.

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Reassessment notice issued by jurisdictional AO instead of faceless AO to be quashed

Where impugned notice issued under section 148A(b), order passed thereon under section 148A(d) and consequent notice issued under section 148 were all issued by Jurisdictional Assessing Officer (JAO) and not by a Faceless Assessing Officer (FAO), as was required by provisions of section 151A, impugned notices were to be quashed:

FACTS OF THE CASE:

- The Assessee filed its return of income for the assessment year 2019-20.
- The Jurisdictional Assessing Officer (JAO) issued a notice under section 148A(b) and thereafter, passed an order under section 148A(d) and issued a notice under section 148.
- The Assessee filed a writ petition to challenge the notice issued under section 148 and also the underlying prior notice and order under section 148A(b) and section 148A(d), respectively.

HELD:

- On perusal of the record, it is apparent that the impugned notice issued under section 148A(b), the order passed thereon under section 148A(d) and the consequent notice issued under section 148 are all issued by the Jurisdictional Assessing Officer (JAO) and not by a Faceless Assessing Officer (FAO), as is required by the provisions of section 151A.
- To give effect to the provisions of section 151A, the Central Government has issued a Notification dated 29-3-2022 whereby a faceless mechanism has been introduced. Thus, necessarily in resorting to a procedure under section 148A and the consequent notice to be issued under section 148, the Assessing Officer is required to adhere to the provisions of section 151A read with the Notification. Thus, for a notice to be validly issued for reassessment under section 148, the respondent-revenue would need to be compliant with section 151A.
- In the instant case, it is apparent that the respondent-revenue has not complied with the Scheme notified by the Central Government pursuant to section 151A(2). The Scheme has also been tabled in Parliament and is in the character of subordinate legislation, which governs the conduct of proceedings under section 148A as well as section 148. In view of the explicit declaration of the law in *Hexaware Technologies Ltd. v. Asstt. Commissioner of Income-tax* [2024] 464 ITR 430 (Bom.), the grievance of the Petitioner-Assessee insofar as it relates to an invalid issuance of a notice is sustainable and consequently, the very manner in which the proceedings have been initiated, vitiates the proceedings.
- In this view of the matter, the revenue that as the present case pertains to the central charges, it would be required to be excluded, cannot be accepted and it would be

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required to be rejected. The writ petition is accordingly allowed in terms of prayer (i) Notice under section 148, (ii) Order passed under section 148A(d), and (iii) Notice issued under section 148A(b) are quashed and set aside”

[2024] 166 taxmann.com 284 (Bombay High Court) in Macleods Pharmaceuticals Ltd. v. Assistant Commissioner of Income Tax [case referred Hexaware Technologies Ltd. v. Asstt. CIT [2024] 162 taxmann.com 225/464 ITR 430 (Bombay)]