

DESAI SAKSENA & ASSOCIATES

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Friday Tax Alert

From:

**Tax Team of Desai Saksena and Associates
Chartered Accountants**

CA Varsha Nanwani (Senior Manager - Taxation)
Vikas Jogle (Manager - International Taxation)
CA Neelu Dusseja (Senior Manager – Indirect Taxation)
CA Neha Patel (Manager - Taxation)
CA Ajay Sachani (Manager - Taxation)
Digvijay Hirwani (Assistant Manager - Taxation)
Alok Sharma (Deputy Manager - Indirect Taxation)

Contacts:

If you have any questions or would like to have additional information on the topics covered in this alert, please email one of the following DSA professionals:

- ✓ CA Varsha Nanwani (Senior Manager – Taxation)
varsha@dsaca.co.in
- ✓ Vikas Jogle (Assistant Manager – International Taxation)
vikas@dsaca.co.in
- ✓ CA Neelu Dusseja (Senior Manager – Indirect Taxation)
neelu@dsaca.co.in
- ✓ CA Neha Patel (Manager - Taxation)
neha@dsaca.co.in
- ✓ CA Ajay Sachani (Manager – Indirect Taxation)
ajay@dsaca.co.in
- ✓ Digvijay Hirwani (Assistant Manager - Taxation)
digvijay@dsaca.co.in
- ✓ Alok Sharma (Deputy Manager – Indirect Taxation)
sharma.alok12@gmail.com

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CBDT relaxes provisions of TDS/TCS in the event of death of deductee/collectee before linkage of PAN and Aadhaar

The Board had provided a window of opportunity to the taxpayers upto 31-5-2024 for linkage of PAN and Aadhaar for the transactions entered into upto 31-3-2024 to avoid higher deduction/collection of tax under section 206AA/206CC of the Income-tax Act, as the case may be.

Central Board of Direct Taxes issued Circular No. 08/2024 on August 5, 2024, addressing the issue of higher TDS/TCS rates under sections 206AA and 206CC of the Income-tax Act, 1961, in cases where the deductee or collectee has passed away before linking their PAN and Aadhaar.

The circular responds to taxpayer grievances concerning instances where deceased individuals could not link their PAN and Aadhaar by the deadline of May 31, 2024, leading to higher tax demands on deductors and collectors. To resolve this issue **the Board has clarified that no liability for higher TDS/TCS rates will apply if the deductee or collectee passed away before the PAN-Aadhaar linkage could be completed.** The circular stipulates that transactions conducted up to March 31, 2024, will not attract higher tax rates under sections 206AA/206CC if the death occurred on or before May 31, 2024.

Vide circular no. 8/2024 [F. No. 275/4/2024-IT(B)] dated 05.08.2024

Press Release dated 20.08.2024

CBDT issues clarification in respect of Income-tax clearance certificate (ITCC): It is being erroneously reported that all Indian citizens must obtain income-tax clearance certificate (ITCC) before leaving the country

Section 230 (1A) of the Income-tax Act, 1961 (the 'Act') relates to obtaining of a tax clearance certificate, in certain circumstances, by persons domiciled in India. The said provision, as it stands, came on the statute through the Finance Act, 2003 w.e.f. 1.6.2003.

The Finance (No.2) Act, 2024 has made only an amendment in Section 230(1A) of the Act vide which, reference of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (the 'Black Money Act') has been inserted in the said Section.

There appears to be a mis-information about the said amendment emanating from incorrect interpretation of the amendment. It is being erroneously reported that all Indian citizens must obtain income-tax clearance certificate (ITCC) before leaving the country. **This position is factually incorrect.**

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Section 230 of the Income Tax Act, 1961 “**every person is not required to obtain a tax clearance certificate.** Only certain persons, in respect of whom circumstances exist which make it necessary to obtain a tax clearance certificate, are required to obtain the said certificate”. This position has been in the statute since 2003 and **remains unchanged even with the amendments vide Finance (No. 2) Act, 2024.**

CBDT vide its Instruction No. 1/2004, dated 05.02.2004, has specified that the tax clearance certificate under Section 230(1A) of the Act, may be required to be obtained by persons domiciled in India only in the following circumstances:

- Persons involved in serious financial irregularities and his presence is necessary in investigation of cases under the Income-tax Act or the Wealth-tax Act and it is likely that or
- Those persons who have direct tax arrears exceeding Rs 10 lakh that has not been stayed by any authority.

Further, a person can be asked to obtain a tax clearance certificate only after recording the reasons for the same and after taking approval from the Principal Chief Commissioner of Income-tax or Chief Commissioner of Income-tax.

In view thereof, it is **reiterated that the income-tax clearance certificate under Section 230(1A) of the Act, is needed by residents domiciled in India, only in rare cases, such as (a) where a person is involved in serious financial irregularities or (b) where a tax demand of more than Rs. 10 lakh is pending which is not stayed by any authority.**

Delay in filing revision application beyond 6 years condoned as Assessee faced genuine hardship due to old age:

FACTS OF THE CASE:

- The Assessee, who was an Insurance Surveyor, filed an application on 12-5-2016 seeking condonation of delay under section 119(2)(b) in order to claim a refund for the relevant assessment years 2009-10 to 2014-15.
- The respondents rejected the application for condonation of delay.
- Mr. T.C. Gupta, learned counsel appearing on behalf of the petitioner, submits that the petitioner, a senior citizen now aged about 72 years, faced genuine hardship, and thus, ought to have been granted benefit under Section 119(2)(b) of the Income Tax Act read with CBDT Circular dealing with the relaxation/delay condonation dated 09.06.2015
- Being aggrieved by the order, the Assessee preferred an appeal before the Hon'ble High Court.

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HELD:

- It has been examined that the reason given by the petitioner before the authority was that he is a senior citizen with a limited income from survey fee payments from an Insurance Company. As a result, he was unable to file his income tax returns for the relevant assessment years on time. The impugned order also takes notice of the fact that the Assessee has deposed that he was under- depression during that period, which was coupled with old age.
- The vehement opposition of the respondents/revenue has been considered that no genuine hardship reason has been established in the instant case, and thus, once the key word of the legislation *i.e.* the genuine hardship does not operate, then the provisions of section 119(2)(b) would not apply, but such proposition is not agreeable.
- **The court finds that the senior citizen/considerable age, depression, as mentioned coupled with the fact that the petitioner is not on the wrong side of the law/revenue collections as he is not facing any kind of scrutiny or action by the respondents, and thus, he deserves to be dealt with leniently in this peculiar factual matrix.** The Court has also heavily relied on the fact that the tenure of filing the returns sought to be filed in the present case begins about 15 years ago, the impugned order is of 2016, this writ petition is pending for last 07 years and the age of the petitioner is around 72 years, which do not warrant complete remand of the matter. The core law of **section 119(2)(b) read with CBDT Circular No.09/2015 dated 9-6-2015, clearly reflect that if there is a genuine hardship, then a condonation of upto six years can be permitted.**
- Considering the overall perspective and peculiar facts of this case, including the age of the petitioner, section 119(2)(b) read with CBDT Circular No.09/2015 dated 9-6-2015, which prescribes six years delay condonation on genuine hardship, depression, old age, long pendency of the issue and the petitioner's status as a small-scale surveyor with no negativity in revenue collection by the tax authorities (like scrutiny) attached, have to be considered as genuine hardship. Thus, in these peculiar facts and circumstances, holding it to be a case of genuine hardship, the impugned order dated 27-2-2017 is quashed and set aside. **The authority concerned shall accept the returns and decide the claim of the petitioner, while strictly adhering to the six years limit from the date of the petitioner's application as prescribed in the CBDT Circular No.09/2015 dated 9-6-2015, while treating it to be a case of genuine hardship, in accordance with law.**

[2024] 165 taxmann.com 545 (Rajasthan High Court) in Padam Raj Bhandari v. Union of India