

DESAI SAKSENA & ASSOCIATES

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Friday Tax Alert

From:

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CDBT specifies the 8 income tax forms to be furnished electronically under Rule 131(1) and 131(2) of the income-tax rules, 1962

CDBT specifying forms, returns, statements, reports, orders, by whatever name called prescribed in Appendix-II to be furnished electronically under sub-rule (1) and sub-rule (2) of rule 131 of the income-tax rules, 1962

In exercise of the powers conferred under sub-rule (1) and sub-rule (2) of Rule 131 of the Income-tax Rules, 1962 ('the Rules'), the Director General of Income Tax (Systems), with the approval of the Board, hereby specifies that the following Forms, returns, statements, reports, orders, by whatever name called, shall be furnished electronically and shall be verified in the manner prescribed under sub-rule (1) of Rule 131:

Sr No.	Form	Description
1	3CED	Application for an Advance Pricing Agreement
2	3CEE	Application for withdrawal of Advance Pricing Agreement request
3	3CEFA	Application for Opting for Safe Harbour
4	3CT	Income attributable to assets located in India under section 9 of the Income-tax Act, 1961
5	10BBA	Application for notification under sub-clause (iv) of clause (c) of Explanation 1 to the clause (23FE) of section 10 of the Income-tax Act, 1961
6	10BBC	Certificate of accountant in respect of compliance to the provisions of clause (23FE) of section 10 of the Income-tax Act, 1961 by the notified Pension Fund
7	10FA	Application for Certificate of residence for the purposes of an agreement under section 90 and 90A of the Income-tax Act, 1961
8	34F	Form of application for an Assessee, resident in India, seeking to invoke mutual agreement procedure provided for in agreements with other countries or specified territories

The above notification shall come into effect from 01st April, 2024.

[Notification no. 01/2024, dated 26.02.2024]

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Bombay High Court Quashes Reassessment Order against Wife as Husband purchased the property

Where Assessing Officer reopened assessment in case of the Assessee-housewife in order to verify source of payment for purchase of property, since the Assessee had not made any payment for the purchase of property, the impugned reopening notice was to be quashed and set aside

FACT OF THE CASE:

- ✓ The Assessee, a housewife who had no income and therefore, was not filing any income tax return, received a notice under section 148A(b) in which it was stated that the officer has information which suggests that income chargeable to tax for the Assessment year 2016-17 had escaped assessment.
- ✓ The Assessee submitted that the **property was purchased by her husband and all the payments were made by him**. The Assessee also explained that the **Assessee's name was included as a joint holder in the agreement for sale**, but no payment had been made by the Assessee. Copy of the registered agreement for the property, the husband's bank details, etc. were made available.
- ✓ Notwithstanding the details and documents being provided, the impugned order under section 148A(d) has been passed. It was stated in the order that the explanation and documents submitted by the Assessee did not conclusively preclude the suggestion based on the information available that the income chargeable to tax had escaped assessment.

CONCLUSION:

- ✓ The only basis on which the order has been passed is, that the Assessee has not submitted the details of the source of Rs. 88,75,000/- paid for the purchase of property by her husband, source and the details of receipt of the amount from the relatives, whereas the husband's income is only Rs. 18,49,980/-.
- ✓ Though the revenue has strongly opposed the petition, but at the end he agreed that those **details have to be sought from the husband for husband's assessment and not from the Assessee** herein because the Assessing Officer has accepted that the Assessee has not made any payment for the purchase of the property.
- ✓ It is also noticed that surprisingly the Principal Chief Commissioner has also accorded sanction for the issuance of this order instead of directing the Assessing Officer to drop the proceedings against the Assessee.

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- ✓ In the circumstances, the order passed under section 148A(d) is quashed and set aside because it is not a fit case for reopening the assessment in the case of the Assessee.

[2024] 160 taxmann.com 726 (Bombay High Court), in Kalpita Arun Lanjekar v. Income Tax Officer, Ward-28(2)(1)]

Show Cause notice cannot be challenged under writ jurisdiction on the ground that the audit report did not allege fraud/ suppression

FACT OF THE CASE:

- ✓ M/s. ABT Limited (Taxpayer) is inter alia engaged in the business of supply of light vehicles and parts thereof as also servicing of such vehicles.
- ✓ The Tax Authorities from Audit Division conducted the audit of the Taxpayer's books of accounts for FY 2017-18 to 2020-21, pursuant to which, an audit report was issued in Form GST ADT-02.
- ✓ The aforesaid audit report culminated in the issuance of two SCNs inter alia including a show cause notice issued under Section 74 of the CGST Act (Impugned SCN).
- ✓ Aggrieved by the Impugned SCN, the Taxpayer filed a Writ Petition before the Madras High Court.

CONTENTIONS OF THE TAXPAYER:

- ✓ **The audit report did not record any findings of fraud, willful misstatement or suppression of fact in respect of any of the observations made therein.** Absent such findings, the Tax Authorities are not empowered to issue the Impugned SCN under Section 74 of the CGST Act.
- ✓ The Tax Authorities have not issued an intimation in Form GST DRC-01A under Rule 142(1A) of the CGST Rules. The amendment to Rule 142(1A) of the CGST Rules, making it directory from mandatory, is prospective in nature, and hence, the same would not apply to the present proceedings which relate to the period prior to and after the amendment to Rule 142(1A) of the CGST Rules.
- ✓ Since the Impugned SCN relates to the Taxpayer's unit having GSTIN 33AABCA8398K1ZA, the expenditure relating to only such unit should be taken into consideration instead of taking the expenditure on a consolidated basis.

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- ✓ The Taxpayer would have furnished relevant documents had the Tax Authority uploaded the communication (dated 4 July 2023) on the GST portal instead of sending it through e-mail.

CONTENTIONS OF THE TAX AUTHORITIES:

- ✓ **As per Section 65 of the CGST Act, show cause notice under Section 74 of the CGST Act can be issued even if the audit report does not contain any findings relating to fraud or suppression of facts. Thus, the SCN was issued by the proper officer in accordance with law.**
- ✓ Further, the Taxpayer can furnish their response to the Impugned SCN and also raise the objections raised in the present Writ Petition before the Tax Authorities.

OBSERVATIONS AND RULING BY THE HIGH COURT:

- ✓ Requirement to provide findings for issuing notice under Section 74 of the CGST Act:
 - Section 65(7) of the CGST Act indicates that the audit conducted under Section 65(1) of the CGST Act should result in the detection of tax not paid or short paid or erroneously refunded or that ITC was wrongly availed or utilised. Thus, the obligation with regard to the contents of the audit report (under Section 65 of the CGST Act) appears to have been satisfied in the present case.
 - **There is nothing in the language of Section 65 of the CGST Act to indicate that the audit report should contain findings of fraud or willful misstatement or suppression of facts.** On the contrary, Section 65(7) of the CGST Act provides that the proper officer may initiate action under Sections 73 or 74 of the CGST Act.
- ✓ Requirement to issue intimation in Form GST DRC-01A:
 - While Rule 142(1A) of the CGST Rules was amended prospectively, the Impugned SCN was issued subsequent to the date of the amendment. Therefore, even if the amendment is prospective, the amendment would apply with regard to the Impugned SCN.
- ✓ As regards the Taxpayer's contention that the expenses ought to be taken qua the unit and not on a consolidated basis, it was observed that the same does not call for interference with the Impugned SCN under Article 226 of the Constitution of India.
- ✓ In view of the above, the Writ Petition was dismissed by allowing liberty to the Taxpayer to file a reply to the Impugned SCN.

[ABT Ltd Vs. The Additional Commissioner of GST & Central Excise [TS-41-HC(MAD)-2024-GST]]