

Direct Tax Vista

Your weekly Direct Tax recap

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1. Procedure for Lower TDS u/r 28AA streamlined; Consumption Statement to be available online to deductors

For grant of certificate for TDS at lower rate or no TDS u/s 197(1) of the Income-tax Act, the Proviso to Rule 28AA (4) was notified vide Notification No. 74/2018 dated 25-10-2018, as under -

Provided that where the number of persons responsible for deducting the tax is likely to exceed one hundred and the details of such persons are not available at the time of making application with the person making such application, the certificate for deduction of tax at lower rate may be issued to the person who made an application for issue of such certificate, authorising him to receive income or sum after deduction of tax at lower rate.

Now vide Notification No. 2/2023 an SOP has been notified and this will come as a big relief for the taxpayers who apply for low or no TDS certificates where the details of the deductor are not available at the time of making application and there are more than 100 deductors. Rule 28AA is applicable for TDS under the provisions of sections 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA, [194LBA] 194LBB, 194LBC, 194M, 194-O and 195. However, it is important to note that this notification is other than those deductees which are trusts, etc and which fall under Rule 28AB.

The Most important feature is the “Consumption/ Tracking of Certificate”.

The certificate reported by deductors who have received certificate in their TDS statements, will be consumed on the basis of processing of TDS statements as per FIFO principle. The deductor should verify/ track consumption status of the certificate before furnishing certificate details in TDS statement(s) through the path

'Deductor login->Statement / Payments-> History-> Validate Lower Deduction Certificate u/s 197/ 195(3)/ 195(2)' to avoid any defaults.

The entire procedure is as follows –

- a. An application in Form 13 with Annexure II shall be made by the taxpayer/ Deductee on the TRACES. The applicant can track the status of the application through option 'Track Request for Form13/ 15C/15D' under the tab 'Statements/Forms'.
- b. The application will be assigned to the TDS AO or DCIT/ACIT as per the thresholds specified in the notification.
- c. Once the application in form 13 has been successfully submitted, the data like processed data of Income Tax Returns of previous 4 financial years, PAN Demand, Orders/returns/Audit report of last 4 years, will be obtained by CPC-TDS.
- d. The AO shall process the application by scrutinizing the data alongwith Information about the history of previous TAN less certificate issued to the applicant where the number of deductors who consumed the said certificate did not reach up to 100 during the last financial year, if available. AO can also seek clarifications online which will be reflected on the TRACES login of the applicant. After approval/rejection of the application, as the case may be, it will be forwarded to the supervisory authority, i.e., the Range Head or Range Head & CIT.
- e. Thereafter, the Range head shall process the application through TRACES-AO Portal. He will also see all data alongwith Recommendation of the TDS AO. He can seek and get further clarifications.

- f. Based upon the revenue forgone, the application will be marked to the CIT who shall also take into consideration Recommendation of the Range Head. He can seek and get further clarifications.
- g. After a final decision in the application has been taken by the CIT, the application will be marked back electronically on TRACES-AO Portal to the AO for issuance of the certificate or rejection of the application.

2. If the Assessing Officer has not been able to impose penalty within period of limitation due to certain practical difficulties, the period of limitation cannot be extended

A short concept envisaged in the case of PRISTINE JEWELLERY Vs INCOME TAX OFFICER WARD [2023-VIL-1280-ITAT-SRT] is that If the Assessing Officer has not been able to impose penalty within period of limitation due to certain practical difficulties, the period of limitation cannot be extended. If penalty is not levied within time prescribed under section 275 of the Income Tax Act, it is barred by limitation and existence of reasonable cause for failure of the Assessing Officer to levy penalty is immaterial. No further explanation is required in this case.

3. “Discounts and incentives” are not unexplainable “cash credits”

“Discounts and incentives” are normal in business scenario and sometimes may take substantial proportions. However, the allegation that such “Discounts and incentives” was unexplainable “cash credits” was turned down by The ITAT Chennai in the case of THE ASSISTANT COMMISSIONER OF INCOME TAX Vs M/s MANGAL & MANGAL [2023-VIL-1278-ITAT-CHE].

Section 68 of The Income Tax Act requires taxing of Cash Credits where the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not found satisfactory. The rate of tax is the higher rate u/s 115BBE. However, in case, any income is assessed under any head of income as per provisions of section 14 of the Act, then the question of application of provisions of section 115BBE of the Act, does not arise.

Where a taxpayer is maintaining books of accounts, has also credited the relevant income in the books of accounts as 'discounts and incentives', explained nature and source of the said sum and offered the same to tax as income under the head profit and gains of business, then in the absence of any cogent reason to believe the contrary, such incomes cannot be treated as 'cash credits' u/s 68 of The Income Tax Act.

4. Payment for 'Background screening and investigation services' is neither Fees for Technical Services ("FTS") nor royalty

The definition of Royalty requires that the consideration received must be for the use of or right to use, any copyright of a literary artistic, or scientific work. As envisaged in the decision of the Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence (P) Ltd. vs. CIT (2021) 125 taxmann.com 42 (SC)/432 ITR 471 (SC), Important is that payments should be made for acquiring the right to use the copyright in the product and not the product itself.

For qualifying as FTS, the information provided should involve imparting of any kind of commercial experience, skill or expertise. The report should impart some information concerning industrial, commercial or scientific experience to the clients for the service to be called FTS. Further the service should make available a technical knowledge, experience, skill, know-how or processes to the clients.

The question in the case of HIRERIGHT LTD Vs ACIT, CIRCLE 2(1)(1) [2023-VIL-1277-ITAT-DEL] was whether payment for 'background screening and investigation services by a non-resident to its customers in India fall within the purview of Fees for Technical Services ("FTS") or royalty?'. The scope of the job was that the service provider provides human resource background screening services including pre-employment background screening, employment, education, verification services and investigative due diligence services. It verifies the details in respect of the concerned candidate viz. i) educational verification ii) employment verification iii) professional reference iv) other checks including but not limited to global sanction check, criminal check, drugs test, etc.

The above service was not to use a copyrighted product and did not make available a technical knowledge, experience, skill, know-how or processes to the clients. Hence the payment was neither considered towards royalty or FTS. This is quite a succinct but effective judgement and the ratio may be useful in such cases.

5. New Inventory Valuation guidelines under Income Tax

The Finance Act 2023 has taken a major step forward by introducing the concept of inventory valuations by Cost Accountants in specific cases, as granted by Section 142(2A) of the Income Tax Act. The Finance Bill 2023 aims to amend Section 142 of the Income Tax Act relating to inquiry before assessment. The proposed amendment to Sub-section (2A) will empower Assessing Officers to request a valuation of the assessee's inventory by a cost accountant. These amendments will take effect from April 1, 2023, and will apply to the respective assessment year and all subsequent assessment years. The critical provision to be taken note of is the amendment in Section 142(3) which states the "*The assessee shall, except where the assessment is made under section 144, be given an opportunity of being heard in respect of any material gathered on the basis of any inquiry under sub-section (2) or any audit under sub-section (2A) and proposed to be utilised for the purposes of the assessment.*" Hence, any other incriminating material which has been found during the inventory valuation may be used for the purposes of the assessment.

Now the CBDT has notified Form 6D For Furnishing 'Inventory Valuation Report' U/s 142(2A) of Income Tax Act. A new rule, Rule 14A has been inserted which deals with the Forms for a report of an audit or inventory valuation under section 142(2A). Amendment has also been made in other rules. As expected, the Form at various places has the requirement of the cost accountant to report "*Any other relevant comment, observation or qualification of the Cost Accountant*". This may be used by the cost accountant to bring out incriminating material which has been found during the inventory valuation may be used for the purposes of the assessment. Some of the other important aspects of the Form 6D are as follows –

A. Table 6 (ii) - Is there any inventory management system software in place? If so, details of the same.

Our Comments – It may be important that an inventory management software is put in place rather than maintaining inventory just in excel, which is seen in some taxpayers. Maintaining inventory in Excel may not instil the requisite confidence in the auditor.

B. Table 7 & 12 - Method of valuation of opening and closing stock of following inventory items used by the Assessee:

- a) Finished Goods (manufactured)
- b) Stock-in-trade
- c) Work-in-progress (WIP)
- d) Raw materials
- e) By-products
- f) Intermediate Products
- g) Jigs, Tools, and Dies
- h) Stores, Spares and Consumables
- i) Scrap
- j) Any other item

Our Comments – Many times standard costing is used for inventory valuation and the excesses are debited/ credited to “Normal Loss” Account. The valuation principle may be tested as per ICDS now.

C. Table 8 - The following is also required to be reported

- Average Inventory Holding Period (days)
- Average Raw Material Stock to Consumption (days)
- Average. Stores and Spares Stock to Consumption (days)

Our Comments – The above ratios are required to be computed for 3 years and therefore any deviation in any year needs explanation.

D. Table 9 – In respect of items manufactured/traded, full quantitative details of raw materials and finished products should be maintained and reported. Inventory of all such raw materials that constitute top 80% of the total inventory value of raw materials should be reported item-wise separately. Inventory of all other raw materials constituting balance may be clubbed under “Others”. Other adjustments include Shortage/ Wastages / Rejects, etc. may be done. Also WIP also needs to be reported accordingly.

Table 13 – Other valuations covered –

- Inventory valuation for Assessee engaged in the Construction Contracts which are dealt with by the ICDS III
- Inventory valuation for Assessee engaged in the trading of Securities which are dealt with by the ICDS VIII.
- Inventory valuation of livestock, agriculture and forest products, mineral oils, ores and gases, except those held by the trader of such inventories

Our Comments – The reporting is very exhaustive. Further Shortage/ Wastages / Rejects, etc. are also reported, hence the proportion needs to be explained if there is any deviation to industry.

6. Appeal withdrawn mistakenly restored back

Ignorance of law is not a defence. However, due to complexities of the cases where multiple assessments and re-assessments have happened for the same year, the courts do allow condonation and take up matters even at the first instance also. Where an Assessee withdrew an appeal against additions made in original assessment order under mistaken/erroneous belief that, on receipt of notice issued under Section 147 of the Act, the assessee was granted the right to file a fresh appeal with respect to additions made in original assessment as additions made by AO were never adjudicated upon by CIT(A).

In interest of justice, the matter in the case of M/s HERITAGE REALITIES Vs INCOME TAX OFFICER [2023-VIL-1273-ITAT-AHM], was remanded back to the CIT(A) as he

had not deliberated on issues against which original appeal was filed by assessee., The matter was restored to file of CIT(A) for denovo consideration and The CIT(A) was directed to decide appeal on merits in accordance with law after giving due opportunity of hearing to assessee. Further, the order for penalty under Section 271(1)(c) of the Act was also restored to file of CIT(A) for denovo consideration.

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