E-Newsletter

BHUJ BRANCH

OF

WESTERN INDIA REGIONAL COUNCIL

OF

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Setup by an Act of Parliament)

MAY-2017

“Who said I won't fail? I might. Who said I might give up? I won't.”

CA Bhavee Thacker

Chairperson's Message

Dear Professional Colleagues,

Firstly I would like to express my gratitude to all the members who gave me an opportunity to become the Chairperson of Bhuj Branch of WIRC of ICAI.

Indeed it's a golden opportunity of my life to serve the profession which is my source of bread and butter.

Our profession is very dynamic, everyone with a new sunrise is surrounded by new challenges which are weakness and threats for our clients and we with our strength and capabilities convert them to opportunities.

In the current scenario as we all are aware that India is in turmoil for implementation of Goods and Services Tax (GST), a wave that will change the economic structure of The country, a step matching the western countriesin a leap.

In this turbulent environment, we the professionals have the pivotal role in shaping the economy.

It's well said that amateurs built an arc but professionals the Titanic.

Looking forward for the forthcoming changes that we will facing, we at Bhuj Branch of WIRC of ICAI have also prepared ourselves for becoming professionals in GST from amateur.

It's our constant endeavour that our branch be a platform for enhancement of knowledge for the members and the students in this vibrant environment.

I along with my team will always try that the faith, love and support you cater, we in return satisfy your expectations in near future by bringing best at Bhuj Branch of WIRC of ICAI.

With this I would like to quote

"Work for a Cause and not Applause,
Live life to express and not to impress
Don't strive to make your presence noticed just make your absence felt ".

CA Bhavee Thacker
Chairperson

REQUIREMENT OF PRE-DEPOSIT FOR STAY ON DEMAND

-CA. Chunauti H. Dholakia

The Gujarat High Court in the landmark judgment of ***Jagdish Gandabhai Shah Vs. Principal Commissioner of Income-Tax, Valsad*** held that the assessing officer should not read the memorandum in isolation and the conditions mentioned in the instructions should also be taken into account before requesting the assessee to deposit 15% of the disputed demand while granting stay of demand. AO shall not reject the stay application merely because 15% of amount of demand has not been deposited by the assessee

Introduction:

At the time of filing appeal for stay on demand by the taxpayer, AO's were often insisted for payment of high proportion of the disputed demand before granting stay of the balanced demand. To remove such hardship faced by tax payers, CBDT has issued official memorandum F. No. 404/72/93-ITCC dated 29.02.2016 for partial modification to instruction No.1914 dated 21st March, 1996, directing AO to grant stay on demand till disposal of first appeal on payment of 15% of the amount disputed. Also through press release dated 3rd March, 2016 CBDT has confirmed above revised guidelines for stay of demand on first appeal stage. But the interpretation of this memorandum has raised certain issues regarding quantum of payment of disputed demand as pre-deposit for stay of demand. The Gujarat High Court in the landmark judgment of *Jagdish Gandabhai Shah Vs. Principal Commissioner of Income-Tax, Valsad* **held that the assessing officer should not read the memorandum in isolation and the conditions mentioned in the instructions should also be taken into account before requesting the assessee to deposit 15% of the disputed demand while granting stay of demand. AO shall not reject the stay application merely because 15% of amount of demand has not been deposited by the assessee as pre-deposit. There is no such requirement of pre-deposit of 15% of disputed demand either at the time of submitting stay application or before the stay application is considered on merits. Brief fact and analysis of the case is as under:**

Fact of the Case:

Order of assessment has been passed by the assessing officer u/s. 143(3) of the Income-Tax Act and demand notice of Rs.9138400/- was served to the assessee. Feeling aggrieved with the order, assessee filed an appeal before CIT(A) and also filed an application u/s.220(6) with the AO to keep in abeyance the demand till the disposal of the first appeal. AO rejected the application on the ground that at the time of filing this application assessee has not deposited 15% of the demand as pre-deposit. Assessee has approached respondent No.1, who has also rejected stay application and asked to pay entire outstanding amount of the demand. The Gujarat high court contended that interpretation of requirement of deposit of 15% of the disputed amount as pre-deposit before submitting stay-application is made absolutely on misconception and misunderstanding of the modified instruction dated 29th February, 2016 and hence set aside orders passed by the respondent No. 1 and 2 and remanded the matter to AO to pass appropriate order on stay application submitted by the assessee afresh in accordance with

law and considering the modified instructions dated 29th February,2016 read with earlier instruction No. 1914 dated 21st March, 1996.

Analysis of the Case:

Section 220(6) of the Income Tax Act provides that where the taxpayer has filed an appeal before CIT(A) u/s. 246 of the Act, the AO may at his discretion treat the taxpayer as not being a defaulter with respect to the amount in dispute in the appeal even if the time for payment has expired as long as the appeal is still pending for review. Section 246 and Section 246A of the Income Tax Act, deals with appealable orders, does not require the assessee for depositing any amount before filing the appeals. The issue of depositing amount of demand is dealt with instructions issued by the CBDT. This case is based on interpretation of CBDT official memorandum F. No. 404/72/93-ITCC dated 29.02.2016. To interpret this memorandum, reason behind issuance of this memorandum has to be understood.

Official memorandum No. F. No. 404/72/93-ITCC dated 29.02.2016

As a tax-payer friendly measure, Finance Minister Mr. Arun Jetly has expressed in the budget speech while introducing Finance Bill, 2016 that "*The income tax department is also issuing instruction making it mandatory for the assessing officer to grant stay of demand once the assessee pays 15% of the disputed demand while the appeal is pending before Commissioner of Income-Tax (Appeals). In case of deviation, assessing officer has to get order of his superiors. The taxpayer also has an option to go to superior officer in case he does not agree with conditions of stay order passed by the subordinate officer*." In response, CBDT has issued official memorandum No. F. No. 404/72/93-ITCC dated 29.02.2016 **for partial modification to instruction No.1914 dated 21st March, 1996 and a** press release dated 3rd March, 2016 **has been issued confirming above guidelines. Earlier instruction requires the assessee to pay towards the disputed taxes a *reasonable amount* in lumpsum or in installment. But this instruction raised issue like how AO will determine the reasonable amount? Hence to streamline and standardize the quantification of the "lumpsum amount" to be paid by the assessee in order to grant stay of the balance amount by the AO, CBDT has issued official memorandum dated 29.02.2016.**

This memorandum contains guidelines to be followed for recovery of outstanding demand, including the procedure for stay of demand. As per this memorandum, demand will be stayed only if there are valid reasons and mere filing of appeal against the assessment order will not be a sufficient reason to stay the recovery of demand. Under this new memorandum, where the outstanding demand is disputed before the Commissioner (Appeals), the AO shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand unless the case falls within following two categories.. (1) As per clause B(a) of the memorandum, if AO is of the view that the nature of additions resulting in the disputed demand is such that the payment of a lumpsum amount higher than 15% is warranted, (e.g. in a case where addition on same issue has been confirmed by appellate authorities in earlier years or the decision of

supreme court or jurisdictional High Court is in favour of tax department or addition is based on credible evidence collected in search or survey operation, etc.) the AO is required to refer the matter to administrative Principal CIT/CIT, or (2) as per clause B(b) of the memorandum, if the AO is of view that nature of addition resulting in disputed demand is such that payment of a lumpsum amount lower than 15% is warranted (e.g. in a case where addition on same issue has been deleted by appellate authorities in earlier years or the decision of supreme court or jurisdictional High Court is in favour of the taxpayer, etc), in that case also the AO is required to refer the matter to the administrative Principal CIT/CIT. Therefore in both the eventualities, i.e. in case of opinion of AO to require the assessee to deposit more than 15% or less than 15%, AO has to refer the matter to Principal CIT/CIT. Hence the discretionary power to deposit more than 15% or less than 15% rests with the AO. But in both cases, AO has to refer the matter to Principal CIT/CIT as the word used between two clauses is "or". **In both the cases, Principal Commissioner or the Commissioner, after considering all relevant facts, shall decide the quantum/proportion of demand to be paid by the assessee as payment of 15% of the disputed demand. In case AO does not refer the matter to Principal CIT/CIT and in case assessee is aggrieved by the demand of 15% to be deposited, the assessee is free to approach the Principal CIT to make percentage of disputed demand amount less than 15%.**

In case AO grants stay of demand on payment of 15% of the disputed demand and if the assessee is still aggrieved, he may approach the jurisdictional administrative Principal CIT or the Commissioner for a review of the decision of the AO. Hence before granting stay of appeal, AO is required to follow above procedure. AO, shall dispose of stay petition within 2 weeks of filing petition and in case matter is referred to Principal CIT/CIT, respective authority, they have to dispose of stay petition within 2 weeks of AO making such reference. He shall not reject the application for stay of demand, merely because 15% of demand has not been deposited by the assessee.

Further, one notable point is that the new memorandum has been issued only in "partial modification" of earlier instruction No. 1914. Hence this memorandum does not supersede the instruction No. 1914, and has to be read in conjunction with the earlier instruction for granting stay of demand, and some part of earlier instructions, which are left untouched by the present memorandum shall continue to apply. Hence clause No. 2-B(iii) of the instruction No. 1214 dealing with situation of "genuine hardship caused to the assessee" in depositing 15% of the demand as pre-deposit has to be considered by the AO as well as by Principal CIT. Even if assessee's finances do not indicate any hardship, AO has to consider that whether genuine hardship would cause to the assessee in case AO directs to pay 15% amount? A recent judgment of Flipkart India (P.) Ltd. Vs ACIT (2017) 79 Taxmann 159 (Kar.) addresses this issue.

A BRIEF COMPARATIVE STUDY OF IT RULES 114B-C-D-E

By CA Neesha R.Patel

114B- Transaction In Relation to which permanent Account number (PAN) is to be quoted in all documents for the purpose of clause(c) of Sub Section (5) of Section 139A. Substituted by the IT (twenty –second Amdt.) Rules, 2015, *w.e.f. 01-01-2016.*

Rule 114B of the Income tax rule ,1962 Provides that the Permanent Account Number(PAN) Needs to be quoted on all documents mentioned under section 139A(5) of the IT Act, 1961 by the person while reporting certain transaction/return or submitting certain documents to the tax authority. Types and limits of such transaction are given in rule 114B. Out of them major transaction and their limits are given below.

Every person (be a trader or not) will have to quote Pan in case of all transactions of sale or purchase of any goods or service where amount exceeds Rs. 2 Lakh.

PAN will have to quote while purchasing any motor vehicle except two wheeler.

For opening a bank account or demat account, PAN will have to be quoted.

In case the hotel or restaurant bill paid in cash in excess of RS. 50,000, PAN will have to be quoted.

If the payment for the purpose of foreign tour or for purchasing foreign currency exceeds RS. 50,000 in cash, PAN will have to be quoted.

PAN will have to be quoted in case the amount of sale or purchase of immovable property exceeds Rs. 10 Lakh.

A person who does not have PAN and enters into transaction specified in Rule 114B shall make a declaration in Form no. 60.

114C- Verification of Permanent Account Number in Transaction Specified in Rule 114B.

A person, who enter in relation to a transaction specified in rule 114B has received any document shall ensure after that permanent account number has been duly and correctly mentioned therein or as the case may be, a declaration in form 60 has been duly furnished with complete particulars. For Exa. If a retailer purchase goods from wholesaler for Rs. 2.5 Lakh, then he would have to quote his PAN. Buyer will have to give PAN and Seller will have to quote it on all papers likes sales bill, etc. After Verifying PAN.

114D - Time and manner in which persons referred to in rule 114C shall furnish a statement containing particulars of Form No. 60.

Person, who has received declaration in Form No. 60 on or after the 1st day of January, 2016, in relation to transaction specified in rule 114Bshall furnish a statement in form 61 containing particulars of such declaration to director of income tax through online transmission of electronic data. Retain form no. 60 for a period of six years from the end of the financial year in which the transaction was undertaken.

114E - Furnishing of statement of financial transaction. Substituted by the IT (Twenty-second Amdt,) Rules, 2015 w.e.f. 01-04-2016

The statement of financial transaction required to be furnished under sub section (1) of section 285BA of the act shall be furnished in respect of a financial year in form no. 61A and shall verified in the manner indicated therein.

The main points regarding declaration of the statement of financial transactions based on nature and values of transactions along with the corresponding class of person or the reporting person under rule 114E, of income tax Act, 1962, are;

In case of payment made in cash for purchase of bank draft, pay order etc. Cash deposit and cash withdrawals amounting to almost Rs. 10 lakhs per year, statement need to be furnished by the concern reporting authority.

In case of buy back of shares from any person of an amount aggregating to 10 lakh rupees or more in a financial year , statement need to be furnished by the company.

AIR information to be given by any person who is liable for audit under section 44AB regarding receipt of cash payment exceeding 2.00 lakh rupees for sale, by any person, of goods or services of any nature as per table no. 11 of rule 114E (2).As per rule 114E (2) the above information to be given for transaction recorded on or after 01-04-2016 only. Further as per table no. 11 there is no aggregation of amount for the financial year required as compared to the other entries in the same table.

Provided that where the reporting person is a non-resident, the statement may be signed, verified and furnished by a person who holds a valid power of attorney from such Designated Director.

Last date of filling return of AIR has been shifted from 31st August to 31st May of succeeding financial year u/R 114E(5).

THE LOVELY GAME OF LAW

44AD CONTROVERSIAL THINGS AFTER FINANCE ACT 2016!!

CA JEKIL V SHAH

Is it necessary that 44AD must contain the mandate for getting books audited as it did earlier, or only 44AB will suffice? If not needed, then why was it there till now and why is it similarly still there in provisions like 44AE.

There is a substance of logic of the law makers based on which the law is created and then the law is read based on the logic the law readers want to read. But somewhere down the line, there is always a law which surpasses the readers logic because the anticipation of the readers logic, based on the law, somewhere makes the readers believe that the intention of the law makers was "probably" the same as their logic.

And the word "Probably" is the one from where litigations, counters, debates, arguments, talks, etc occur. Here, we will see one such debatable argument where the argument is whether the logic of the law makers is something which literally comes from the law we read or is there something like a mistake which we feel because of our logic to the statutory provisions!

What If I tell you that from 01-04-2017, there is no Audit requirement, even if you disclose your Income less than that specified percentage of 8%? Some of you may have a shocking reaction, some of you may have a feeling of laughter considering it to be a joke, but let's go in detail to look forward to one such opinion **that** *may* **be framed based on the new 44AD provisions!**

The base from which the opinion for non audit in case profits disclosed are less than 8% of turnover is derived from the bare interpretations of the amended Section 44AD. The requirement of audit which was earlier mandated and governed in such 44AD cases was Sub-Section (5) which WAS READ EARLIER till 31-03-2017 **as under:**

(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee who claims that his profits and gains from eligible business are lower than the profits and gains specified in *sub section (1)* ***and whose total income exceeds the maximum amount not chargeable to income-tax, shall be required to maintain books of accounts and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB"***

We can see from above that here Sub-Section (1) **of Section 44AD was the yardstick to measure whether audit shall be done or not. And we all know what sub-section (1) is/was. Still, if we want to have a read, It appears like this,**

(1) Notwithstanding anything to the contrary contained in* sections 28 *to* 43C*, in the case of an eligible assessee engaged in an eligible business, a sum equal to eight per cent of the total turnover or gross receipts of the assessee in

the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee, shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession" :

Provided that this sub-section shall have effect as if for the words "eight per cent", the words "six per cent" had been substituted, in respect of the amount of total turnover or gross receipts which is received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account during the previous year or before the due date specified in sub-section (1) of* section 139 *in respect of that previous year.

Now, If we try to visualize the current effect of Section 44AD, The sub section that mandates requirement of audit is still sub-section (5), but the NEW PROVISION OF SUB SECTION (5) OF 44AD FROM 01-04-2017 **READS AS UNDER:**

(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee *to whom the provisions of sub-section (4) are applicable* ***and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of*** **section 44AA** ***and get them audited and furnish a report of such audit as required under*** **section 44AB*.***

So, we can see that the yardstick to measure whether audit needs to be done or not has shifted to Sub-Section (4), the New Sub-Section (4) of Section 44AD reads as under:

(4) Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).

So, from one line of thought, if we visualize the outcome of the new sub section (4) and (5) of Section 44AD, we can arrive at this interpretation:

The person who falls and qualifies under sub-section (4) only moves to sub section (5) which talks about audit provisions

Sub Section (4) says that if any assessee declared profits according to sub-section (1) for any one previous year and then if he doesn't declare the profits any of the five succeeding Assessment years, then he cannot take the benefit of the provisions of this section for 5 assessment years subsequent to the year relevant to the previous year in which profit has not been declared according to sub section (1). And so, the audit requirement will then literally be to only those who firstly take the benefit of 8% provision in one year and then doesn't wish to take, and in those cases, legal framework seems to intend the assessee to get his books audited for 5 years thereafter,

even if he declares profit more than 8%.

However, When you see the current Section 44AB, In Clause (d), It specifies that any person who doesn't shows his profits less than profits deemed by Section 44AD, shall get his books audited hereunder.

But, previously, as explained above, previously, even under Section 44AD, there was an audit requirement given, however, it is missing now, definitely which is given under 44AB currently to get the books audited.

So, as per the general provisions, it appears that still audit will have to be done and there is lesser chance of ambiguity even on the same matter. But certain questions come to mind…
Is it necessary that 44AD must contain the mandate for getting books audited as it did earlier, or only 44AB will suffice?
If not needed, then why was it there till now and why is it similarly still there in provisions like 44AE.

I am leaving this upon to the readers to decide as I said earlier too…

"*Whether the logic of the law makers is something which literally comes from the law we read or is there something like a mistake which we feel because of our logic to the statutory provisions!*"

IT SECTION

WANNACRY RANSOMWARE

Jigar Jobanputra
M.C.A.

1. How to stay safe from WANNACRY RANSOMWARE?

CERT has laid down certain protective measures which go as follows:

A. For Users:

- First of all, back-up all the critical data on your system and keep it offline for an easier recovery process, in case the ransomware strikes.

- Apply patches which were released by Microsoft under the Microsoft Security Bulletin 2017 MS17 – 010 on March 2017.

- Regular patches for unsupported versions like XP, Vista, Server 2003 and Server 2008 are not available. Hence, users are advised to upgrade their systems to prevent threat.

- Users are also required to upgrade regular patches for the Windows version they are using.

- In case the patches are not available, CERT advises to isolate the system from the network. Further, users can download the patches onto a CD or a USB, apply it and then connect the system back to the network.

- Maintain an updated Anti-Virus by a reputed software firm.

- Block spam on mails.

- DO NOT click on unsolicited mails, even from known contacts.

- Disable Macros on Microsoft Office products.

- For technical measures, users are advised to visit the CERT website.

B. For Enterprises:

- CERT advises enterprises to use DKIM or other such Email monitoring methods for protection against email spoofing.

- Use whitelisting solutions on critical systems i.e. only trusted applications should be run.

- Use software restriction policies to prevent the execution of malware.

- Deploy web and email filters on the enterprise network.

- Scan all emails via a reputed anti-virus solution.

CERT says that till now, 7 variants of the ransomware have been detected. It mentions that security tools are freely available on its website which can be used to secure systems. A botnet tool on the website can also be used to detect and remove the malware from the system.

2. What to do if infected?

Follow these steps immediately in case your system gets infected by the malware.

- Isolate the system from the network immediately. The malware reportedly spreads very quickly through LAN.

- DO NOT PAY RANSOM. CERT strongly advises against it as there is no guarantee whatsoever that the data will be handed back to the user after doing so. Furthermore, this fuels the attacker's intention and propagates it further.

- Run cleanup tools mentioned on the CERT website to disinfect the system.

- Preserve the data even if it is encrypted.

- Report the incident to the law-enforcement agencies. Users can send an email to incident.cert-in.org.in or call on the toll-free number – 1800-11-4949.

UPCOMING EVENTS

1. CPT Mock Test to be held on 28-05-2017.
2. Two Days GST conclave in June-2017.

ACTIVITIES IN THE MONTH OF APRIL 2017

1. Mock Test IPCE & FINAL – APRIL 2017

2. CPE Programme conducted on Test – 28-04-2017

   - "THE BENAMI TRANSACTIONS (PROHIBITION) AMENDMENT ACT, 2016" by CA. Kapil Thacker.

   - "Overview, application and implications of ICDS from A.Y. 2017-18 and Tax issues and assessment of deposits of demonetised notes including invocation of Benami Transactions Prohibition Act", by CA. Tarun Ghia, CCM, Convenor of ICDS Publication of ICAI.

EXPRESSION OF GRATITUDE

For their exemplary services during MOCK TEST April – 2017

1. CA Sweta Vora
2. CA Rajan Rajde
3. CA Richa Shah

BIG THANK YOU TO

Gallery

1. WIRC OFFICE BEARER'S MEET 28-04-2017


2017-04-28 11:28

2. CCM CA TARUN GHIA VISIT TO BHUJ FOR ICDS SEMINAR ON 28-04-2017.

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