



## Bombay Chartered Accountants' Society

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Tel. : + 91 22 6137 7600 Website : www.bcasonline.org  
E-Journal : www.bcajonline.org E-mail : bca@bcasonline.org  
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**President**  
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**Hon. Jt. Secretaries**  
Manish Sampat  
Abhay Mehta  
**Hon. Treasurer**  
Suhās Paranjpe

24<sup>th</sup> August 2017

To,  
Mr. Sushil Chandra, Chairman  
Central Board of Direct Taxes,  
North Block,  
New Delhi

Dear Mr. Chandra

Sub: 1) Intimation issued under section 143(1) of the Income-tax Act, 1961 ('the Act') displays mismatch of income without detailed analysis or reconciliation, of income tax returns filed by assesses.

2) Challenges and potential consequences in relation to returns processed by CPC

On behalf of our members and on behalf of thousands of affected tax payers of the country, we would like to bring to your kind attention some serious issues which have been brought to our notice by some of our members on the captioned subject.

### ***1. Issuance of intimation under section 143(1) of the Act without detailed analysis***

It is noted that while issuing Intimations issued u/s. 143(1) for A.Y. 2016-17, in a large number of cases, notices have been sent to tax payers pointing out alleged discrepancies in the income shown in the return of income. These notices are based on a reconciliation done by the CPC between Form 26AS, Form 16 (in case of salaried tax payers) and the figures reflected in the ITR forms. In most cases, the notices state that the difference between the figure as per the ITR and the figure as per Form 16 / 26AS represents under reported income or over reported deductions and therefore adjustments will be made in the Intimation to be issued u/s. 143(1).

Some of the sample adjustments that have been proposed to be made in several cases are given below:

#### **a. Denial of Allowances, Deductions and extra additions made at the issuance n Income Tax Return**

- a.1 Allowances which are exempt under section 10(14)(ii) of the Act read with Rule 2BB of the Income-tax Rules, 1962 ('the Rules'), claimed in the Income-tax return has been disallowed since the same has not been considered in Form 16 issued to the assesses say Transport Allowance

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a.2 Chapter VI- A deductions- mainly u/s. 80C, 80D and 80TTA have been denied on the ground that the same are not reflected in the Form 16.

It is respectfully submitted that these types of comparisons are completely unfair and unwarranted u/s. 143(1). First of all, Form 16 cannot be made the basis for computing the total income of an assessee. At best, the salary income can be verified with the Form 16. An assessee has every right to claim deductions and/or exemptions if he/she is entitled to do so under the Income-tax Act even if the same are not reflected in the Form 16. It may be appreciated that issuance of Form 16 is not in the control of a salaried person. It is done by the employer. If an employer makes a mistake or if an employer provides incomplete information in the Form 16, that cannot be taken as the basis for making upward adjustments in an employee's total income. In any case, deduction u/s. 80TTA can never form part of Form 16 since it is a deduction in respect of interest on savings bank account. This deduction will never appear in the Form 16 unless the employee has provided details of his income from savings bank account to his employer.

Further, it is common knowledge that many times, employees prefer to pay advance tax on their non salary income instead of disclosing the said income to the employer and getting a TDS done from that income by the employer. This stand is taken across the country by thousands of employees. There could be various reasons for this. One very strong reason for taking such a stand is to protect the privacy of one's other income from the employer. In such cases, the income as well as deductions claimed under Chapter VI-A against such income will not appear in the Form 16.

It is respectfully submitted that proposing adjustments to the income based on such a comparison will only add to the problems faced by taxpayers. This is in stark contrast to the Finance Minister's repeated statements that the government would like to make tax laws simple and easy to comply with for taxpayers.

As regards the exemptions like transport allowance, there are multiple situations where the Form 16 generated by an employer is not accurate in all respects. Often, employers show only net taxable salary income in the e-TDS statements and Form 16 instead of showing the gross separately and the exemptions separately. On the other hand, an employee, while filing his own return, would show the correct amounts (i.e. gross and exemptions). In such cases, the employee cannot be penalised because of the lapse of the employer. At the end of it, the employer has every right to disclose his true and correct income in the return.

### **b. Amounts on which Tax is Collected at Source is being considered as Other Income**

In certain cases, the seller of certain goods has to collect tax at source and pay it to the government. This TCS appears in the Form 26AS of the tax collector. In several cases, it has been brought to our notice that the gross amount (on which the seller has collected the tax at source) is being added to the total income of such person based on Part B of Form 26AS which displays the details of tax collected at source (TCS) by the seller.



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### c. of notice u/s. 139(9) of the Act

In a large number of cases, tax payers have received notices u/s. 139(9) stating that the return filed is defective. In such cases, the reason given for such a stand is that certain amounts as shown in the ITR in the fields of income do not match with the amounts shown in the ITR in the Balance Sheet / Profit & Loss Account fields.

In this regard, certain examples brought to our notice by some of our members are given below:

#### Case one:

When a taxpayer has Capital Gains which is credited to the Profit & Loss Account, the same is reduced from the figure of Net Profit in the computation and then offered for tax under the head "Capital Gains". The amount that is reduced from the Net Profit as per Profit & Loss Account would be the book profit. On the other hand, the amount of capital gains offered for tax in the return would be as computed under the provisions of the Income-tax Act. Therefore, in case of long term capital gains, the gain offered to tax would be indexed gain which would naturally be different from the figure of book profit.

In such genuine cases also, the income tax return has been treated as defective return under section 139(9) of the Act to the extent of mismatch between the schedules of Business Profit with reference to CG schedule.

#### Case two:

The Income tax return has been rejected on the basis of difference between schedules of Business Profit and Income from Other Source as illustrated hereunder:

Actual facts of the case - income earned by Mr. A

| Sr. No. | Particulars   | Amount (Rs.) | Amount (Rs.) |
|---------|---|--------------|--------------|
| 1.      | Net Profit as per Profit & Loss Account (includes Interest income of parent)        |              | 35,000       |
| 2.      | <b>Other Sources</b>  |              |              |
|         | <u>Interest Income</u>  |              |              |
|         | Parent  | 10,000       |              |
|         | Minor's income (which would obviously not be credited to P&L Account of the parent) | 15,000       |              |
|         |   |              | 25,000       |

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Thus, in the above example, the gross income of the assessee would be as under:

|  |            |
|--|------------|
| Business Income (35,000 less 10,000) =           | Rs. 25,000 |
| Income from Other Sources (own + minor's income) | Rs. 25,000 |
| Total  | Rs. 50,000 |

In the return of income filed by Mr. A, the above data would be shown as under. As against this, the last column shows the stand that the CPC is taking while processing the returns:

| Particulars                     | As per Return | Stand taken by CPC  |
|---------------------------------|---------------|---|
| Business Profits                | 35,000        |   |
| Less: Interest Income - Parent  | 10,000        | Mismatch of Interest income offered under other sources as reduced from Business Income.                    |
| Net Business Income             | 25,000        |   |
| <b>Other Sources</b>            |               |   |
| <u>Interest Income</u>          |               |   |
| Parent                          | 10,000        |   |
| Minor's income                  | 15,000        |   |
| Total Income from Other Sources | 25,000        | Interest income offered for tax is not matching with interest income reduced from Schedule Business Profits |
| Gross Income                    | <b>50,000</b> |   |

Thus, in such cases, while processing the return, non-existent defects are pointed out by the CPC and the return is treated as defective.

### Case three:

In Form ITR 1 – Income from salary (net) has to be mentioned in Part B. On the other hand, the employer is required to show gross salary, various exemptions (like HRA, LTA) and the net taxable salary in the TDS return filed in Form 24. As a result, Form 26AS shows gross salary based on the TDs return filed by the employer.

In such cases, the income tax return has been treated as defective return under section 139(9) of the Act due to the mismatch of salary income shown in ITR 1 and Form 26AS. It may be appreciated that in such cases, the tax payer cannot, even if he wants to, show the gross salary and the deductions/exemptions separately in ITR 1.



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In ITR 2, in salary schedule, gross salary, exempt allowances and net salary can be shown and hence 139(9) notices are not received if ITR 2 is filed.

## 2. Challenges and potential consequences in relation to returns processed by CPC

Quoting from the maiden budget speech of the Hon'ble Finance Minister in 2014 ".....I would like to convey to this August House and also the investors community at large that we are committed to provide a stable and predictable taxation regime that would be investor friendly and spur growth....".

However, receipt of notices of defective returns as mentioned in preceding paragraphs not only negate the stated objective of the government but also create huge challenges and hardship on the affected assesseees. In this process, the good work done by the income-tax department of expeditious disbursement of refunds in several cases goes unnoticed and the negativity created by such wrongful and inappropriate adjustments / proposed adjustments to the income overshadows the minds of tax payers.

We humbly request your goodself to resolve the issues and issue necessary directions to the CPC so that before issuing any notices to the assesseees, proper care is taken and unnecessary hardship is not caused to tax payers.

Thanking you,

Yours sincerely,  
For Bombay Chartered Accountants' Society

Narayan R. Pasari  
President

Ameet N. Patel  
Chairman, Taxation Committee

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