

11th January, 2019

To
Ajay Bhushan Pandey,
Secretary (Revenue),
Ministry of Finance,
Government of India,
128-A North Block,
New Delhi.

Respected Sir,

**Sub: Representation on mechanical issue of prosecution notices by the
Income-tax department**

1. Clarifications/ Initiatives of Government for “Taxpayer friendly atmosphere”

It has been the motto of the present government headed by Hon'ble Prime Minister Shri Narendra Modi and Hon'ble Finance Minister Shri Arun Jaitley to provide taxpayers with “non-adversarial” and “taxpayer friendly atmosphere”. In the light of the same, to propagate the agenda of the Government, the Central Board of Direct Taxes (‘CBDT’) has time and again been issuing directions to the tax authorities for making the functioning of the tax authorities “non-adversarial” and “tax-payer friendly”. The said directions act as guidance for the tax authorities to function smoothly and create confidence among the tax payers. Certain circulars have been issued by CBDT aiming to reduce litigation. All such actions of CBDT have been appreciated by the Industry and Stake-holders.

2. Suggestions invited by CBDT for simplification/ clarifications

Further, to seek, active participation from taxpayers, CBDT has been inviting suggestions from stakeholders for simplification in tax laws, smoothening of return processing, issue of refunds, timely disposal of appeals etc. to which several organisations have been regularly providing their thoughts and suggestions to the CBDT. These initiatives are highly appreciated by the stake-holders and industry.

3. Guidance on launching of prosecution proceeding vide Letter dated 7th March 2017

It is noticed that the motto of the Government is being undermined, probably to achieve revenue targets, by certain actions of the CBDT, which is creating a lot of hardship and harassment to taxpayers. The CBDT chairman, vide letter dated 7th March 2017, has issued

guidance to Principal Commissioner of Income-tax ('PCITs') on launching of prosecution proceedings (copy enclosed).

In the letter, the CBDT Chairman, observed that the work relating to filing of prosecution complaints and disposal of compounding applications "is not up-to the mark". CBDT Chairman has opined that prosecution proceedings can be successfully initiated in several cases and he has directed the officers to put in their best and expedite filing of prosecution complaints and disposal of compounding applications.

The said letter of CBDT Chairman was strongly objected to by various associations and several representations were sent to CBDT as well as Finance Secretary. A copy of the representation made by IMC and other associations before the Finance Secretary is enclosed, for your reference (in the said representation, the CBDT Chairman's letter was erroneously referred to as dated 7th March, 2018 instead of 7th March, 2017).

As per the information collated through RTI, we have been informed that several prosecution notices were issued by the department in 2018 throughout India, for even the smallest of defaults, in a mechanical manner without undertaking any qualitative analysis. Many petitions have been filed before various magistrate courts, which are pending for disposal.

4. Fresh notices issued by department for launching of prosecution

Despite the strong objections being raised by the representative bodies of the taxpayer/ industry associations and professional organisations, it seems that similar directions have been issued to the field officers by the higher-ups, based on which several prosecution notices have been issued by the tax department to mop up the tax collection to meet higher targets. The criteria for initiation of prosecution has been enlarged, and an illustrative list is as under:

- Non-filing of return of income or filing of return after the due date (belated return);
- Return of income filed, but self-assessment tax not paid;
- Disallowance accepted by the taxpayer and not contested in appeal before appellate authorities (including cases of very small amount of disallowance);
- Cases where penalty is levied, whether taxpayer has challenged the levy or not; and
- Failure to pay taxes deducted at source to the credit of Central Government (irrespective of amount or period of delay).

We observe that considering the above criteria, thousands of show cause notices for initiation of prosecution have been issued all over the country, just to achieve the so-called targets given by the CBDT. We had an occasion to see some of the notices issued, from which it is clear that the notices are issued without undertaking any qualitative analysis, and the same have been issued merely to create fear psychosis to mop up tax collections. By issue of such notices, we are moving towards tax terrorism, instead of promoting a tax friendly atmosphere.

We submit that prosecution should be launched in only rare cases of tax evasion, or cases of large scale deduction of TDS without payment. Mechanical wholesale issue of prosecution notices sends out the message that the Tax Department does not distinguish between major

and minor offences, and regards even minor mistakes as a major offence at the same level as a large scale tax evasion.

Since, many prosecution proceedings have been launched by the department in a mechanical manner, a large number of petitions are pending for disposal with the Magistrate Courts, which do-not have any background of tax laws. We believe that the mechanical way in which prosecution proceedings have been initiated by the department, will not be entertained by the Magistrate Court. We believe that with these huge number of cases coming up for hearings before the courts, the income-tax department is not geared up to deal with the large number of cases. It is likely that a lot of taxpayers would file petitions before the High Court to get the notices quashed, which will have to be defended by the department.

We would like to draw your attention to the decision of the **Madras High Court** in the case of **Sayarmull Surana [TS-725-HC-2018(MAD)]**, wherein the High Court set-aside the prosecution proceedings launched u/s 276CC by the department hurriedly, without appreciating the facts of the case of the taxpayer, who had challenged the assessment order before the appellate authorities. Since, in that case, the appellate authorities had granted significant relief to the taxpayer, the very basis on which prosecution proceedings were launched was not valid.

Further, it is to be noted that there could be several genuine reasons on the part of the taxpayers for delay in filing of return, delay in payment of self-assessment tax and delay in payment of TDS. Also, it is to be noted that the taxpayers may not wish to appeal against the disallowance made by tax authorities due to the quantum of disallowance or the taxpayer may want to buy peace and not litigate further, and such acceptance of disallowance cannot be a reason for initiation of prosecution. Further, mere levy of penalty, which is not contested before higher authorities, cannot be a ground for initiation of prosecution. In this regard, it is to be noted that in the following cases, it has been held that mere acceptance of disallowance/ addition proposed by tax officer cannot be a ground for levy of penalty:

- Sir Shadi Lal Sugar & General Mills Ltd. (168 ITR 705) (SC)
- Bhimjee Bhanjee & Co (146 ITR 145) (Bombay HC)
- Dilip N Shroff v Jt. CIT (291 ITR 519)(2007) (SC)
- CIT Vs. Manjunatha Cotton & Ginning Factory (2013) 92 DTR 111 (Karnataka HC)
- CIT vs Dharamchand L. Shah (204 ITR 462) (Bom)
- CIT vs Clive Mills Ltd. (138 ITR 182) (Cal)

This interpretation is equally applicable in case of prosecution, as there is no mens rea on the part of the tax payer.

5. Implications

If taxpayers who regularly pay taxes are treated in such a manner, taxpayers would lose faith in the CBDT and the Government. The roadshows and statements of Hon'ble Prime Minister and Finance Minister convey that they want to improve the culture and promote Ease of doing business and give tax friendly environment. Is it that certain over enthusiastic officers in the Board are trying to derail the objective of the Government?

If quick action is not taken to prevent the field officers from issuing show cause notices without proper analysis of facts and by setting certain threshold limits for issue of notices, this tax terrorism will create fear in the minds of investors coming in India, due to such high-handed approach of the government.

6. Prosecution notices issued to foreign company/directors

We would also like to bring to your notice that where prosecution notices are issued to foreign companies and foreign resident directors, they get very irked by this mechanical approach of the department and are scared to come to India or suggest new Investment in India. These notices project a wrong image of the Indian Government, as on the one hand, it is inviting foreign investors to invest in India by promising Ease of Doing Business and tax friendly environment and on the other hand, it is driving them away by initiating criminal proceedings on a mechanical basis, without undertaking any qualitative analysis of the offenses.

7. Tax evaders should be brought to book

We fully agree and support the fact that if there is a case of tax evasion, it should be brought to book and penal action should be taken against the tax evaders. However, the manner in which the matter is handled by the CBDT is totally different, as instead of concentrating on or monitoring tax evaders who are not in tax records, Tax Officers are targeting and trying to punish and penalise the taxpayers who are already in tax records. This approach is acting as a harassment/ discrimination of the honest taxpayers.

8. Request to keep larger interest of the country in mind by avoiding frivolous litigation or creating fear psychosis:

It is common knowledge that the taxpayer base in the country is shockingly small in relation to the overall population. The present Government has time and again disclosed these figures and also expressed shock that such a small community is bearing the burden of direct taxes of the entire nation.

For the tax payer base to grow, two things need to be kept in mind which are:

- Existing tax payers need to be trusted for their efforts; and
- Non tax payers need to be shown the benefits of becoming a member of the tax paying community

Prosecution for tax evasion of say, Rs.10,000 cannot be same as or similar to that for tax evasion of say Rs.1 crore. Hence prosecution cannot be taken up with a mechanical approach. No doubt, prosecuting defaulters is the government's prerogative, but with great powers comes great responsibility.

When the Hon'ble Prime Minister and Hon'ble Finance Minister talk of a Tax Payer friendly, non-adversarial tax regime, it is shocking and distressing to observe actual action on the other side, where CBDT gives directions totally contrary to the vision of Present Government of Tax payer friendly and "Non-adversarial" regime. **It is imperative that necessary directives may be issued by the Ministry directing the CBDT not to take any steps that would cause any harm to honest taxpayers and to ensure that the promise of non-adversarial regime is maintained.**

We humbly request your Honours to resolve the above issue at the earliest in order to avoid unnecessary hardship being caused to the taxpayers.

Thanking you,

Yours sincerely,



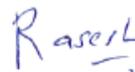
Raj Nair
President,
IMC Chamber of Commerce and Industry



Sunil Gabhawalla
President,
Bombay Chartered Accountants' Society



CA. Chintan M. Doshi
President,
Chartered Accountants Association, Ahmedabad



Rasesh Shah
President,
Chartered Accountants Association Surat



Raghavendra Shetty
President
Karnataka State Chartered Accountants' Association



R L Bajpai
President
Lucknow Chartered Accountants' Society

Encl:

1. Letter of CBDT chairman to PCIT's dated 7th March, 2017
2. Joint Representation filed by IMC, BCAS, CAAA, CAAS, KSCAA and LCAS dated 8th August, 2018.