

Exploring Provisions

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**E-TDS Filing - CPC Processing - Problem
Solving Module - Part II - Deductee**

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PREFACE

It was ten years ago that the Board has devised a scheme for electronic filing of returns of tax deducted at source under Notification No. 205/2003 (F. No. 132/31/2003 TPL), dated 26.8.2003. In the consequence deductors were required to electronically furnish the TDS related information through the NSDL. Those days there used to be filing in Form No. 24 or Form No. 26 or Form No. 27 which are now 24Q, 26Q and 27Q respectively. Such forms to accompany a declaration in Form 27A like today. Even though guidelines relating to filing of returns relating to tax deduction at source on computer media were laid down in Board's earlier Circular No. 008 dated September 18, 2003 however there was no mechanism to deal with detection of errors or defaults in the course of deduction and deposit of TDS. Thus for about seven years until 1.4.2010 the electronic filing had run through trial phase without putting any additional burden upon the e-deductor. In their Circular No 2 dated 21.5.2009 it was acknowledged that the data held in TDS database was largely unverifiable and further the matching of the deduction reported by the deductor and claimed by the deducteeassessee continued to be poor. The Department had thus been allowing credit for TDS claims even though the transactions do not fully match/reconcile with the information provided by the deductor and even the Department had not been able to undertake follow up verification of such claims at the deductors end on account of inadequate resources. Thus new strategy were formed to assign unique transaction identification number (UTN) for each deduction record under a new TDS and TCS payment and information reporting system vide Circular No. 2 dated 21.5.2009.

Thus the Finance (No. 2) Act, 2009, inserted a new section 200A (1) in the Income-tax Act, 1961 that empower the Board to make a scheme for processing of TDS statements and more so for framing of centralized processing scheme. The scheme has been notified via Notification No. 3/2013(F No. 142/39/2012-SO(TPL)) dated 15.1.2013. It thus enables determination of following:

1. Short deduction;
2. Late payment;
3. Nonpayment;
4. Interest;
5. Refund.

Centralized processing of returns scheme envisage no interface with the taxpayer. Under the Centralized processing scheme there is 100% match for TDS compliance for rate of deduction, due date of deduction, due date of deposit, PAN particulars and for any mismatch/inconsistency the system to roll out defaults and further such default needs to be straightened online only. Deductors of tax and the taxpayer's are thus expected to know the acts of resolve in such a scenario.

Purpose of this Document

This document aims to deal the subject in problem solving approach for the point of view of deductor and the deductee in two parts respectively. This is a step by step guide to TDS mechanism with maximum coverage of practical difficulties faced during its application.

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I. Background

Centralized processing of returns scheme envisage no interface with the taxpayer. Under the Centralized processing scheme there is 100% match for TDS compliance for rate of deduction, due date of deduction, due date of deposit, PAN particulars and for any mismatch/inconsistency the system to roll out defaults and further such default needs to be straightened online only. Deductors of tax and the taxpayer's are thus expected to know the acts of resolve in such a scenario. Taxpayers are largely dependent upon the filing of statements by the deductors and any mistake at the deductor's end can cause the taxpayer a lot of inconvenience and more importantly denial of due credit of his taxes deducted. The petitioners filed a Public Interest Litigation (PIL) regarding the numerous difficulties faced by Income tax assesseees due to the faulty processing of income tax returns and tax deducted at source, and requested the Court to issue appropriate directions. [[2013] 31 taxmann.com 31 (Delhi), HIGH COURT OF DELHI, Court On Its Own Motion v. Commissioner of Income-tax* SANJIV KHANNA AND SIDDHARTH MRIDUL, JJ. - WRIT PETITION (CIVIL) NOS. 2659 & 5443 OF 2012, MARCH 14, 2013] (full Text available in Appendix 1)

II. In response to a Public Interest Litigation regarding difficulties faced by assesseees after computerisation and central processing of income tax returns, seven mandamus were issued

- 1) The first issue was regarding the delayed disposal of rectification application made under section 154.
- 2) The second issue raised was regarding uploading of wrong or fictitious demand in the Central Processing Unit (CPU) at Bengaluru. The verification and reconciliations of demands uploaded at the CPU were disputed by the assesseees. It was claimed that the demands adjusted against the refunds were not recorded. Consequently, a circular was issued by CBDT regarding the same.

- 3) The third issue relates to the adjustment of refund against demand, without giving prior intimation in writing to assessee-contrary to the provisions of section 245.
- 4) The fourth issue relates to interest on refunds under section 244A, wherein it was claimed that interest was payable if assessee was not at fault. However, revenue contended that interest under section 244A was not payable on selfassessment tax, but on advance tax and TDS.
- 5) The fifth issue was regarding uncommunicated intimation under section 143(1) resulting either in demand or reduction in refund.
- 6) The sixth issue was regarding the unverified TDS under the headings 'U', 'M' 'P' in Form 26AS.
- 7) The seventh issue related to credit of TDS or rejection of credit, even when the TDS stood paid by the deductor, on account of mismatch between the details available in Form 26AS and the details furnished by assessee in his return. The grievance of the assesseees was that inspite of approaching deductors to rectify and correct TDS details, deductors failed to do so as their failure did not entail any adverse consequence or action against them, while the deductee, being the taxpayer, was harassed.

III. Key Highlights of the Decision of the High Court

1) Uploading of wrong or fictitious demand and delayed disposal of rectification applications

- a. A reading of the circular shows that the burden is put on the assessee to approach the Assessing Officers to get their records updated and corrected. In the given situation, this was the easiest and most convenient option available, but this should not be a ground for the Assessing Officer not to *suomotu* correct their records and upload correct data. Each assessee has a right and can demand from the respondents that correct and true data relating to the past demands should be uploaded. CBDT should and must endeavour and direct the Assessing Officers to upload the correct data.

b. As per Citizen Charter of Income tax

Department, refund along with interest in case of electronically filed returns should be made within six months. In case of manually filed returns, refund should be made within nine months. The time commences from the end of month in which the return/application is received. Similarly, the Citizen Charter states that a decision on the rectification application under section 154 will be made within a period of two months. The Board has, however, issued instructions that rectification application under section 154 should be disposed of within 4/6 months. the respondents are to examine the necessity for proper dak/receipt counters for receipt of applications under section 154 by hand or by post. It would be desirable that each application received should be entered in a diary/register and given a serial number with acknowledgement to the applicant indicating the diary number. It was also suggested that details of applications under section 154 should be uploaded on the website as this would entail transparency. The website should indicate the date on which the application was received and date of disposal of the application by the Assessing Officer concerned. [Para 15]

c. Each application under section 154 has to be disposed of and decided by a speaking order. This is the mandate of the Act. The order has to be communicated to the assessee and there is a relevant column to be filled in the register, which is now required to be maintained. [Para 18]

2) Regarding adjustment of refund contrary to the mandate of section 245

a. In the order dated 31-8-2012, the respondents were directed to follow the procedure prescribed under section 245 before making any adjustment of refund payable by the CPC at Bengaluru. The assessees must be given an opportunity to file response or reply and the reply must be considered and examined by the Assessing Officer

before any direction for adjustment is made.

The process of issue of prior intimation and service thereof on the assessee would be as per the law. The assessee would be entitled to file their response before the Assessing Officer mentioned in the prior intimation. The Assessing Officer would thereafter examine the reply and communicate his findings to the CPC, Bengaluru, who would then process the refund and adjust the demand, if any payable. The final adjustment will also be communicated to the assessee. [Para 23]

- b. In spite of the opportunity given to the Revenue to take steps, prescribe, adopt a just procedure, to correct the records, etc., nothing has been done and they have not taken any decision or steps. In these circumstances, direction is issued, which will be applicable only to cases where returns have been processed by the CPC Bengaluru and refunds have been fully or partly adjusted against the past arrears while passing or communicating the order under section 143(1) without following the procedure under section 245. In such cases, it is directed that :

- All such cases will be transferred to the Assessing Officer;
- The Assessing Officers will issue notice to the assessee which will be served as per the procedure prescribed;
- The assessee will be entitled to file response/reply to the notice seeking adjustment of refund;
- After considering the reply, if any, the Assessing Officers will pass an order under section 245 permitting or allowing the refund;
- The Board will fix time limit and schedule for completing the said process. [Para 26]

3) Regarding interest on refund under section 244A

An assessee can certainly be denied interest if delay is attributable to him in terms of sub-section (2) to section 244. However, when the delay is not

attributable to the assessee but is due to the fault of the Revenue, then interest should be paid under the said section. False or wrong uploading of past arrears and failure to follow the mandate before adjustment under section 245, cannot be attributed and treated as a fault of the assessee. These are lapses on the part of the Assessing Officer *i.e.* the Revenue. Interest cannot be denied to the assessee when the twin conditions are satisfied and in favour of the assessee. However, even in such cases Assessing Officer may deny interest for reasons to be recorded in writing, if the assessee was in fault and responsible for the delay. [Para 32]

4) Regarding uncommunicated intimations under section 143(1)

a. The law requires that intimation under section 143(1) should be communicated to the assessee, if there is an adjustment made in the return resulting either in demand or reduction in refund. The uncommunicated orders/intimations cannot be enforced and are not valid. The contention of the Revenue, that where an order under section 143(1) was sent and communicated to the assessee but could not be served due to non-availability/change of address or other valid reasons, should not be treated at par with cases where there was no communication or no attempt was made to serve the order whatsoever, is valid. But when there is failure to dispatch or send communication/intimation to the assessee, consequences must follow. Such intimation/order prior to 31-3-2010, will be treated as *non est* or invalid for want of communication/service within a reasonable time. [Para 33]

b. The onus to show that the order was communicated and was served on the assessee is on the Revenue and not upon the assessee. If an order under section 143(1) is not communicated or served on the assessee, the return as declared/filed is treated as deemed intimation and an order under section 143(1). Therefore, if an assessee does not receive or is not communicated an order under section 143(1), he will

never know that some adjustments on account of rejection of TDS or tax paid has been made. While deciding applications under section 154, or passing an order under section 245, the Assessing Officers are required to know and follow the said principle. Of course, while deciding application under section 154 or 245 or otherwise, if the Assessing Officer comes to the conclusion and records a finding that TDS or tax credit had been fraudulently claimed, he will be entitled to take action as per law and deny the fraudulent claim of TDS etc. The Assessing Officer, therefore, has to make a distinction between fraudulent claims and claims which have been rejected on ground of technicalities, but there is no communication to the assessee of the order/intimation under section 143(1). In the latter cases, the Assessing Officer cannot turn around and enforce the demand created by uncommunicated order/intimation under section 143(1). [Para 34]

5) Regarding credit of tax deducted at source (TDS)

- a. The Board had asked the Assessing Officers to accept TDS claims without verification in all returns where difference between TDS claimed and TDS amount reported in 26AS data does not exceed Rs. 1,00,000 which was later reduced to mere 5,000. *Ex facie*, the reasoning that the reduction is to check fraudulent claims by unscrupulous assessee does not appear to be correct as in order to claim credit of TDS, three core fields, being name of the assessee, the PAN and the assessment year must match. Benefit of Rs. 5,000 is only when there is a discrepancy in the amount and not when there is a discrepancy in any of the three core fields.
- b. Also, there can be mismatch because of deductor and the assessee following different methods of accounting. Further, the assessee may treat the income on which tax has been deducted as income for two or

more different years. The respondents must take remedial steps and ensure that in such cases TDS is not rejected on the ground that the amounts do not tally

6) Regarding unverified TDS under different headings

The problem highlighted relates to the use of alphabets 'U', 'M' and 'P' in Form 26AS. The said alphabets stand for 'unmatched challan', 'matched challan' and 'provisional booking'. Provisional booking is applicable for DDOs, *i.e.*, Government deductors and shall be shortly discontinued. 'Unmatched challans' relate to challans where the report by the deductor in the TDS statement are not found available in the OLTAS data base. An assessee as a deductee should not suffer because of the fault made by deductor or inability of the Revenue to ask the deductor to rectify and correct. Once payment has been received by the Revenue, credit should be given to the assessee. [Para 42]

7) Regarding failure of deductor to file correct TDS statements in time

Denying benefit of TDS to a taxpayer because of the fault of the deductor, which is not attributable to the deductee, causes unwarranted harassment and inconvenience. The deductee feels cheated. Therefore, it is directed that when an assessee approaches the Assessing Officer with requisite details and particulars, the said Assessing Officer should verify whether or not the deductor has made payment of the TDS and if the payment has been made, credit of the same should be given to the assessee. These details or the TDS certificate should be starting point for the Assessing Officer to ascertain and verify the true and correct position. The Assessing Officer will be at liberty to get in touch with the TDS circle, in case he

requires clarification or confirmation. He is also at liberty to get in touch with deductors by issuing a notice and compelling them to upload the correct particulars/details.

IV. Deductee's Respite

The problems highlighted here are normally faced by small or middle class taxpayers, including senior citizens as they do not have Chartered Accountants or Advocates on their pay rolls. The marginal amount involved in several cases and inconvenience/harassment involved makes it an unviable and a futile exercise to first approach the deductor and then the Assessing Officer. Rectification and getting corrections made by the deductor and to get them uploaded is not an easy task. The second phase of filing a revised return or an application under section 154 is equally 'daunting and expensive'. Invariably the assesseees write letters or even visit the office of the deductors, but when there is no response or desired result, they get frustrated and suffer. This causes distrust and feeling that the assessee has not been treated justly, fairly and in an honest manner. Various Instructions have been issued by the Board from time to time.

- 1. INSTRUCTION NO.3/2013[F.NO.225/76/2013/ITA.II], DATED 5-7-2013**
SECTION 154 OF THE INCOME-TAX ACT, 1961 -Rectification Of Mistakes - mistakes apparent from records - procedure to be followed in receipt and disposal of rectification applications filed under section 154 (Appendix 2)
- 2. INSTRUCTION NO.4/2013 [F.NO.225/76/2013/ITAT.II], DATED 5-7-2013**
- SECTION 143 OF THE INCOME-TAX ACT, 1961 - ASSESSMENT - GENERAL - identification of unserved intimation under section 143(1) for cases processed prior to 31-3-2010 (Appendix 3)
- 3. INSTRUCTION NO. 5/2013 [F.NO.275/03/2013-IT(B)], DATED 8-7-2013-**
SECTION 199 OF THE INCOME-TAX ACT, 1961 - credit for tax deducted – credit of tds under section 199 to an assessee when the tax deducted

has been deposited with revenue by deductor –

direction of hon'ble Delhi HC in the case 'court on its own motion vs. Union of India' in w.p.(c) 2659/2012 & w.p. (c) 5443/2012* (Appendix 4)

4. INSTRUCTION NO. 6/2013 [F. NO. 312/53/2013-OT], DATED 10-7-2013

SECTION 245 OF THE INCOME-TAX ACT, 1961 - REFUNDS - set off of refunds against tax remaining payable - past adjustment of refunds against arrears where procedure under section 245 was not followed

5. INSTRUCTION NO. 7/2013 [F.NO.312/54/2013-OT], DATED 15-7-2013-

SECTION 244A OF THE INCOME-TAX ACT, 1961 - REFUNDS - interest on - payment of interest under section 244A when assessee is not at fault

V. FAQs

1. Can the payee request the payer not to deduct tax at source and to pay the amount without deduction of tax at source?

A payee can approach to the payer for non-deduction of tax at source but for that they have to furnish a declaration in Form No. 15G/15H, as the case may be, to the payer to the effect that the tax on his estimated total income of the previous year after including the income on which tax is to be deducted will be nil.

Form No. 15G is for the individual or a person (other than company or firm) and Form No. 15H is for the senior citizens.

The following assessee who is in receipt of the specific incomes can approach to the payee for non-deduction of tax at source:-

- a) A resident individual who is in receipt of income as referred to in 194 or 194EE if the amount of such income does not exceed the maximum amount which is not chargeable to income-tax.

b) Any person (other than a company or a firm) who is in receipt of income as referred to in section 193, 194A or 194K if the amount of such income does not exceed the maximum amount which is not chargeable to income-tax.

c) A resident senior citizen (i.e., an individual resident in India who is of the age of sixty years or more at any time during the previous year) who is in receipt of income as referred to in section 193, 194, 194A, 194EE or 194K.

Alternatively, a payee who is in receipt of income referred to in section 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA or 195 can apply in Form No. 13 to the assessing officer to get a certificate authorizing the payer to deduct tax at lower rate or deduct no tax as may be appropriate.

2. In case the deductee does not have PAN. Can he furnish Form 15G/15H for non-deduction of TDS from interest?

As per section 206AA, a declaration in Form No. 15G or Form No. 15H is not a valid declaration, if it does not contain PAN of the person making the declaration. If the declaration is without the PAN, then tax is to be deducted at higher of following rates :

- At the rate specified in the relevant provision of the Act.
- At the rate or rates in force, i.e., the rate prescribed in the Finance Act.
- At the rate of 20%.

3. What if TDS deducted is not reflected in 26AS statement

Non-reflection of TDS credit in Form 26AS can be due to several reasons like non-filing of TDS statement by the payer, quoting incorrect PAN of the deductee in the TDS statement filed by the payer. Thus, in case of non-reflection of TDS credit in Form 26AS, the payee has to contact the payer for ascertaining the correct reasons for non-reflection of the TDS credit in Form 26AS.

4. In case of non-receipt of TDS certificate from the deductor. Can deductee claim TDS in his return of income?

Yes, the tax credit in such case will be reflected in your Form 26AS and, hence, it can be claimed accordingly. However, the claim of TDS to be made in the return of income should be strictly as per the TDS credit being reflected in Form 26AS. If there is any discrepancy in the tax actually deducted and the tax credit being reflected in Form 26AS then it should be intimated to the deductor and difference should be reconciled. The credit granted by the Income-tax Department will be as per Form 26AS.

- 5.** If a deductor fails to deduct tax or deducts tax at a lower rate or pay the deducted tax belatedly with interest he can file revised ETDS returns with correct figures and these belated payments will appear later in the Form 26AS, when the revised ETDS returns are filed. But in the meantime if the deductee, from whom tax has been deducted belatedly or erroneously, has filed his returns and paid taxes, he has to file revised return to claim the additional TDS, or has to pay additional tax along with interest, if the original return has been filed in time. How many times and upto which date the revised ETDS returns can be filed is still not clear. Moreover, the deductee/assessee has to face difficulties by filing revised statements of income each time the ETDS return is revised by the deductor, if the revision is related to his payment.

6. Section 206AA vs Section 139A.

Section 206AA makes it mandatory for every person who is entitled to receive any amount which is tax deductible under Chapter XVIIIB, to furnish his PAN to the person responsible to deduct tax on such income, failing which tax will be deducted at higher rates. Moreover, the section makes it mandatory for every person to quote his PAN on declarations U/s 197A and application U/s 197, failing which the declaration would be considered invalid and the application would be rejected. This is in

contrary to the provisions contained in the section 139A of the act, which stipulates that the persons whose income is below taxable limit, need not obtain PAN and need not file their return of income. Since, Section 206AA is an overriding section and has mandated all persons to obtain PAN, it has caused undue hardship to those having income below taxable limit.

Karnataka High Court in one of its decisions has rightly held that the overriding provisions of Section 206AA being in conflict with the provisions of Section 139A are arbitrary and discriminatory in light of Article 14 of the Indian constitution. Hence, the deductors (banks and financial institutions) need not necessarily insist upon small investors having income below taxable limit, to provide their PAN.

7. Difficulty in getting credit of TDS, where tax has been deducted at the rate of 20% under section 206AA (cases where no PAN/wrong PAN provided to the deductor).

: Tax deductees claim refund of the TDS deducted if their total income falls below the threshold limit. Those who have PAN, and have submitted it to the deductor, it is much easier for them to claim refund of TDS, because TDS credit goes directly into their particular PAN and also appears in their Form 26AS. But in cases, where the deductee does not provide PAN to the deductor, or provides incorrect PAN to the deductor, TDS is deducted at the rate of 20% U/s 206AA. In such cases, there is no record evidencing that the TDS has been deducted under a particular PAN. Consequently, it becomes difficult for those persons to claim refund of such TDS. The only remedy is to apply for PAN.

8. Demands raised on tax-payer, where the deductor fails to deposit TDS deducted, or fails to file TDS returns

TDS deductees, quite often have to face difficulties when the Income Tax Department raises demand, on account of disallowance of TDS claimed

by the deductees in their Income Tax returns. In most of the cases, the reason being that the deductor has not deposited the TDS deducted, or has not filed the TDS returns containing particulars of the TDS deducted within the prescribed time. Though, the default is on the part of the deductor, the deductees have got to face the consequences of non-payment of tax i.e. demand, interest, penalty, etc. – In such a case the deductor should be contacted by the deductee and asked file the return or deposit taxes. In case he fails to do so, the deductee can claim refund of tax deducted and deposit himself

VI. Credit for tax deducted- Some check points

Ramakant Singh v. Commissioner of Income-tax (No. 2) (2011) 81TR (Trib) 505

The Patna Tribunal held that there is no requirement in section 199 that credit for tax deducted at source is to be allowed only after confirmation is received from the issuer of the tax deduction certificates.

In this case the Commissioner's allegation has been that letters issued by the Assessing Officer to various issuers of TDS certificates were unresponded at the time when credit was allowed by the Assessing Officer.

Income-tax Officer v. Ameer Hosang Mistry (2014) 291TR (Trib) 397

The Mumbai Tribunal ruled that on a declaration made by the deductee, credit for tax deduction at source could be claimed by and allowed to the real (de facto) owner, even as the tax deduction at source certificate is in the name of the ostensible owner.

Supreme Renewable Energy Ltd. v. Income-tax Officer (2010) 31TR (Trib) 339

The Chennai bench of the Tribunal held that even if the income earned by the assessee had not been offered for tax being not liable to tax, the assessee would be entitled to credit of the tax deducted at source made in respect of that income.

Capt. J. G. Joseph v. Joint Commissioner of Income-tax (2008) 303TR (AT) 395

The Mumbai bench held that the deductee could not be held liable for the consequences which were beyond the control of the deductee, i.e., non-furnishing of TDS certificate. Under such circumstances the tax and interest could not be recovered from the deductee in respect of salary income for which the TDS certificate not furnished.

Section 205 provides a bar on any such recovery. It is thus always advisable for salaried employee to retain with him or her each salary slip as a record of tax deducted at source. Similarly in case of other deductees it is advisable to retain payment advice copies and bank statements as proof of tax deduction at source so that in the event of non receipt of TDS certificate or missing entry in 26AS he could produce the same to avoid payment of tax again.

In *Yashpal Sahni v. Rekha Hajarnavis*, Assistant Commissioner of Income-tax (2007) 293ITR539 the deductee furnished monthly pay slips and bank statements to show that from his salary, tax was deducted at source so that he escaped action for recovery of TDS.

Pardeep Kumar Dhir v. Assistant Commissioner of Income-tax (2008) 303ITR (AT)45

The Chandigarh bench held that where tax is deducted from the amount which is liable to be assessed and spread over more than one financial year, credit shall be allowed on pro rata basis and in the same proportion in which such income is offered for taxation in different assessment years.

Smt. Varsha G. Salunke v. Deputy Commissioner of Income-tax (2006) 281ITR (AT) 55

The Mumbai bench held that it was incorrect on the part of the Revenue authorities to work out any addition on the basis of the bills subsequently raised to the accounting year which had already passed which according to the method of accounting employed by the assessee had not been recognised as part of business profits. In this case services rendered in March, 1997, would have to be necessarily billed after the close of

the month viz in April 1997 which falls outside the accounting year under consideration so that the bench held that the revenue cannot assess such income in the preceding year merely because TDS certificate for such receipt is issued in the back year perhaps because of the back dated provisioning by the client.

Appendix 1

IT : In response to a Public Interest Litigation regarding difficulties faced by assesseees after computerisation and central processing of income tax returns, seven mandamus were issued

■■■

[2013] 31 taxmann.com 31 (Delhi)

HIGH COURT OF DELHI

Court On Its Own Motion

v.

Commissioner of Income-tax*

SANJIV KHANNA AND SIDDHARTH MRIDUL, JJ.

WRIT PETITION (CIVIL) Nos. 2659 & 5443 of 2012

MARCH 14, 2013

Section 139, read with sections 143(1), 154, 245, 200 and 244A, of the Income-tax Act, 1961 - Return of income - General [Guidelines] - Public interest Litigation was filed alleging numerous difficulties faced by income tax assesseees after implementation of computerization and central processing of returns - To remove such difficulties, mandamus were issued regarding (i) maintenance of register for receipt and disposal of rectification applications under section 154; (ii) procedure prescribed under section 245 to be followed by CPC before making adjustment of refund payable with existing demand; (iii) past adjustments, where procedure under section 245 had not been followed; (iv) interest under section 244A to be allowed when assessee is not at fault; (v) uncommunicated intimation under section 143(1); (vi) verification and correction of unverified TDS in Form 26AS and unmatched challans, within a time period to be fixed; (vii) credit of TDS to an assessee when tax deducted has been deposited with revenue but incorrect particulars have been uploaded by deductor [Paras 16, 18, 26, 27, 33, 34, 49, 50 & 57] [In favour of assessee]

FACTS

- The petitioners filed a Public Interest Litigation (PIL) regarding the numerous difficulties faced by Income tax assesseees due to the faulty processing of income tax returns and tax

deducted at source, and requested the Court to issue appropriate directions.

- The first issue was regarding the delayed disposal of rectification application made under section 154.
- The second issue raised was regarding uploading of wrong or fictitious demand in the Central Processing Unit (CPU) at Bengaluru. The verification and reconciliations of demands uploaded at the CPU were disputed by the assessees. It was claimed that the demands adjusted against the refunds were not recorded. Consequently, a circular was issued by CBDT regarding the same.
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- The fifth issue was regarding uncommunicated intimation under section 143(1) resulting either in demand or reduction in refund.
- The sixth issue was regarding the unverified TDS under the headings 'U', 'M' 'P' in Form 26AS.
- The seventh issue related to credit of TDS or rejection of credit, even when the TDS stood paid by the deductor, on account of mismatch between the details available in Form 26AS and the details furnished by assessee in his return. The grievance of the assessees was that inspite of approaching deductors to rectify and correct TDS details, deductors failed to do so as their failure did not entail any adverse consequence or action against them, while the deductee, being the taxpayer, was harassed.

HELD

Uploading of wrong or fictitious demand and delayed disposal of rectification applications

- A reading of the circular shows that the burden is put on the assessee to approach the Assessing Officers to get their records updated and corrected. In the given situation, this was

the easiest and most convenient option available, but this should not be a ground for the Assessing Officer not to *suo motu* correct their records and upload correct data. Each assessee has a right and can demand from the respondents that correct and true data relating to the past demands should be uploaded. CBDT should and must endeavour and direct the Assessing Officers to upload the correct data. Filing of applications under section 154 *i.e.* application for rectification and correction by the assessee would entail substantial expenses on the part of the assessee who would be required to engage a counsel or advocate or make repeated visits to the Income-tax office for the said purpose. This would defeat the main purpose behind computerization *i.e.* to reduce involvement of human element. [Para 14]

- As per Citizen Charter of Income tax Department, refund along with interest in case of electronically filed returns should be made within six months. In case of manually filed returns, refund should be made within nine months. The time commences from the end of month in which the return/application is received. Similarly, the Citizen Charter states that a decision on the rectification application under section 154 will be made within a period of two months. The Board has, however, issued instructions that rectification application under section 154 should be disposed of within 4/6 months. There is a general grievance that the Assessing Officers do not adhere to the said time limits and the assesseees are invariably called upon to file duplicate applications or new applications in case they want disposal. It is stated that there are no dak or receipt counters or register for receipt of applications under section 154. Thus, there is no record/register with the Assessing Officer with details and particulars of application made under section 154, the date on which it was made, date of disposal and its fate. Therefore, the respondents are to examine the necessity for proper dak/receipt counters for receipt of applications under section 154 by hand or by post. It would be desirable that each application received should be entered in a diary/register and given a serial number with acknowledgement to the applicant indicating the diary number. It was also suggested that details of applications under section 154 should be uploaded on the website as this would entail transparency. The website should indicate the date on which the application was received and date of disposal of the application by the Assessing Officer concerned. [Para 15]
- Uploading of the details of the said registers should be made online preferably within a period of six months. This would be in accordance with the mandate of the Citizen Charter of the Department which states that the respondents believe in equity and transparency. [Para 16]

- Each application under section 154 has to be disposed of and decided by a speaking order. This is the mandate of the Act. The order has to be communicated to the assessee and there is a relevant column to be filled in the register, which is now required to be maintained. [Para 18]

Regarding adjustment of refund contrary to the mandate of section 245

- Section 245 empowers and authorises an Assessing Officer to adjust refunds against pending demands and arrears. [Para 19]
- However, section 245 requires that an opportunity of response/reply should be given and after considering the stand and plea of the assessee, justified and valid order or direction for adjustment of refund can be made. The section postulates two stage action; prior intimation and then subsequent action when warranted and necessary for adjustment of the refund towards arrears. [Para 21]
- CPC, Bengaluru stated that after handing over of old demands to the CPC and commencement of processing of returns by CPC, the procedure under section 245 was being followed by CPC before making adjustment of the refunds and assesseees were being given full details with regard to the demands which were being adjusted. The intimation under section 143(1) issued from CPC incorporated the full details of the existing demands that were adjusted against the refunds. Further, when the processing of a return at CPC resulted in demand, the communication under section 245 was incorporated into the intimation itself. As far as the demands uploaded by the Assessing Officers to CPC portal were concerned, CPC had already issued a communication to the taxpayers through e-mail (wherever e-mail address is available) and by speed post informing him the existence of the demand in the books of the Assessing Officer and that such demand was liable for adjustment against refund under section 245. [Para 22]
- The respondents accept that when a return of income is processed under section 143(1) at Central Processing Unit at Bengaluru, the computer itself adjusts the refund due against the existing demand, *i.e.*, there is adjustment but without following the two stage procedure prescribed in section 245.
- In the order dated 31-8-2012, the respondents were directed to follow the procedure prescribed under section 245 before making any adjustment of refund payable by the CPC at Bengaluru. The assesseees must be given an opportunity to file response or reply and the reply must be considered and examined by the Assessing Officer before any direction for

adjustment is made. The process of issue of prior intimation and service thereof on the assessee would be as per the law. The assessee would be entitled to file their response before the Assessing Officer mentioned in the prior intimation. The Assessing Officer would thereafter examine the reply and communicate his findings to the CPC, Bengaluru, who would then process the refund and adjust the demand, if any payable. The final adjustment will also be communicated to the assessee. [Para 23]

- The said interim order is confirmed. It is noticed that the respondents have taken remedial steps to ensure compliance of section 245 as they now give an option to the assessee to approach the Assessing Officer. [Para 24]

Regarding past adjustments

- However, the problem relating to 'past adjustment' before passing of the interim order on 31-8-2012, still persists and has to be addressed. [Para 25]
- In spite of the opportunity given to the Revenue to take steps, prescribe, adopt a just procedure, to correct the records, etc., nothing has been done and they have not taken any decision or steps. In these circumstances, direction is issued, which will be applicable only to cases where returns have been processed by the CPC Bengaluru and refunds have been fully or partly adjusted against the past arrears while passing or communicating the order under section 143(1) without following the procedure under section 245. In such cases, it is directed that :
 - A. All such cases will be transferred to the Assessing Officer;
 - B. The Assessing Officers will issue notice to the assessee which will be served as per the procedure prescribed;
 - C. The assessee will be entitled to file response/reply to the notice seeking adjustment of refund;
 - D. After considering the reply, if any, the Assessing Officers will pass an order under section 245 permitting or allowing the refund;
 - E. The Board will fix time limit and schedule for completing the said process. [Para 26]
- There are three reasons why the said direction has been issued. Firstly, the respondents accept and admit the position that wrong and incorrect demands have been uploaded in the

CPC Bengaluru. Secondly, the respondents have not followed the mandate and requirement of section 245 before making the adjustment. The two stage process with the opportunity and right of the assessee to submit a reply before the adjustment is made, has been denied. CPC Bengaluru did not entertain or accept any application of the assessee questioning past arrears uploaded in their system as they were not custodian of past records. CPC Bengaluru entertained online applications but did not entertain physical or hard copy applications. Assessing Officer similarly did not entertain any application by the assessee on the ground that the order under section 143(1) was passed by the CPC Bengaluru and they did not have the files/return with them. Thus, the problem was created and caused by the respondents who did not realize the effect and impact of incorrect and wrong arrears being uploaded in CPC Bengaluru and did not follow the statutory requirements of section 245. [Para 27]

Regarding interest on refund under section 244A

- An assessee can certainly be denied interest if delay is attributable to him in terms of sub-section (2) to section 244. However, when the delay is not attributable to the assessee but is due to the fault of the Revenue, then interest should be paid under the said section. False or wrong uploading of past arrears and failure to follow the mandate before adjustment under section 245, cannot be attributed and treated as a fault of the assessee. These are lapses on the part of the Assessing Officer i.e. the Revenue. Interest cannot be denied to the assessee when the twin conditions are satisfied and in favour of the assessee. However, even in such cases Assessing Officer may deny interest for reasons to be recorded in writing, if the assessee was in fault and responsible for the delay. [Para 32]

Regarding uncommunicated intimations under section 143(1)

- The grievance of the petitioner is with regard to the uncommunicated intimations under section 143(1) which remained on paper/file or the computer of the Assessing Officer. This is a serious challenge and a matter of grave concern. The law requires that intimation under section 143(1) should be communicated to the assessee, if there is an adjustment made in the return resulting either in demand or reduction in refund. The uncommunicated orders/intimations cannot be enforced and are not valid. The contention of the Revenue, that where an order under section 143(1) was sent and communicated to the assessee but could not be served due to non-availability/change of address or other valid reasons, should not be treated at par with cases where there was no communication or no attempt was made to serve the order whatsoever, is valid. But when there is failure to dispatch or send communication/intimation to the assessee, consequences must follow. Such intimation/order

prior to 31-3-2010, will be treated as *non est* or invalid for want of communication/service within a reasonable time. [Para 33]

- The onus to show that the order was communicated and was served on the assessee is on the Revenue and not upon the assessee. If an order under section 143(1) is not communicated or served on the assessee, the return as declared/filed is treated as deemed intimation and an order under section 143(1). Therefore, if an assessee does not receive or is not communicated an order under section 143(1), he will never know that some adjustments on account of rejection of TDS or tax paid has been made. While deciding applications under section 154, or passing an order under section 245, the Assessing Officers are required to know and follow the said principle. Of course, while deciding application under section 154 or 245 or otherwise, if the Assessing Officer comes to the conclusion and records a finding that TDS or tax credit had been fraudulently claimed, he will be entitled to take action as per law and deny the fraudulent claim of TDS etc. The Assessing Officer, therefore, has to make a distinction between fraudulent claims and claims which have been rejected on ground of technicalities, but there is no communication to the assessee of the order/intimation under section 143(1). In the latter cases, the Assessing Officer cannot turn around and enforce the demand created by uncommunicated order/intimation under section 143(1). [Para 34]

Regarding credit of tax deducted at source (TDS)

- The said problem can be divided into two categories; cases where the deductors fail to upload the correct and true particulars of the TDS, which has been deducted and paid as a result of which the assessee does not get credit of the tax paid, and the second set of cases where there is a mismatch between the details uploaded by the deductor and the details furnished by the assessee in the income tax return. The details of TDS credited /uploaded in the case of each assessee are available in form 26AS. [Para 35]
- However, the Board had asked the Assessing Officers to accept TDS claims without verification in all returns where difference between TDS claimed and TDS amount reported in 26AS data does not exceed Rs. 1,00,000 which was later reduced to mere 5,000. *Ex facie*, the reasoning that the reduction is to check fraudulent claims by unscrupulous assessee does not appear to be correct as in order to claim credit of TDS, three core fields, being name of the assessee, the PAN and the assessment year must match. Benefit of Rs. 5,000 is only when there is a discrepancy in the amount and not when there is a discrepancy in any of the three core fields. This being a PIL, no specific direction is being issued but the Board must re-examine the said aspect and if they feel that unnecessary burden or

harassment will be caused to the assessee, suitable remedial steps should be taken. [Para 39]

- Also, there can be mismatch because of deductor and the assessee following different methods of accounting. Further, the assessee may treat the income on which tax has been deducted as income for two or more different years. The respondents must take remedial steps and ensure that in such cases TDS is not rejected on the ground that the amounts do not tally. Of course, while issuing corrective steps, the respondents can ensure that fraudulent or double claims for TDS are not made. As it is a technical matter no specific direction is issued, but the respondents should take remedial steps in this regard. [Para 41]

Regarding unverified TDS under different headings

- The problem highlighted relates to the use of alphabets 'U', 'M' and 'P' in Form 26AS. The said alphabets stand for 'unmatched challan', 'matched challan' and 'provisional booking'. Provisional booking is applicable for DDOs, i.e., Government deductors and shall be shortly discontinued. 'Unmatched challans' relate to challans where the report by the deductor in the TDS statement are not found available in the OLTAS data base (Online Tax Accounting System). The respondents will fix a time limit within which they shall verify and correct all unmatched challans. This will necessarily require communication with the deductor and steps to rectify. The time limit fixed should take into account the due date of filing of the return and processing of the return by the Assessing Officer. An assessee as a deductee should not suffer because of the fault made by deductor or inability of the Revenue to ask the deductor to rectify and correct. Once payment has been received by the Revenue, credit should be given to the assessee. [Para 42]

Regarding failure of deductor to file correct TDS statements in time

- The response of the respondents to the issue that no penal provisions are provided for such failure of deductors is unfortunate and unsatisfactory. The response purports to express complete helplessness on the part of the Revenue to take steps and seeks to absolve them from any responsibility. [Para 46]
- By Finance Act, 2012, section 234E has been inserted whereby fee of Rs. 200 per day will be levied for default of the deductor/collector for failure to file TDS/TDS statement within due date. Income-tax Rules, 1962 have been modified wherein deductors of all categories are mandated to upload TDS certificates through tax information network system. On the issue whether section 272B could be invoked for defaulting deductors, the respondents stated that,

section 272BB did not come to the aid of the deductees as far as the current issue was concerned. However, subject to the condition specified under section 271H(3)/(4), section 271H(1) provided for levy of penalty for failure to submit statement under section 200(3)/proviso to section 206C(3) within the time prescribed or for furnishing incorrect information in the said statements. [Para 47]

- Denying benefit of TDS to a taxpayer because of the fault of the deductor, which is not attributable to the deductee, causes unwarranted harassment and inconvenience. The deductee feels cheated. The Revenue cannot be a silent spectator, wash their hands and pretend helplessness. The problems highlighted here are normally faced by small or middle class taxpayers, including senior citizens as they do not have Chartered Accountants or Advocates on their pay rolls. The marginal amount involved in several cases and inconvenience/harassment involved makes it an unviable and a futile exercise to first approach the deductor and then the Assessing Officer. Rectification and getting corrections made by the deductor and to get them uploaded is not an easy task. The second phase of filing a revised return or an application under section 154 is equally 'daunting and expensive'. Invariably the assessee writes letters or even visit the office of the deductors, but when there is no response or desired result, they get frustrated and suffer. This causes distrust and feeling that the assessee has not been treated justly, fairly and in an honest manner. [Para 49]
- Therefore, it is directed that when an assessee approaches the Assessing Officer with requisite details and particulars, the said Assessing Officer should verify whether or not the deductor has made payment of the TDS and if the payment has been made, credit of the same should be given to the assessee. These details or the TDS certificate should be starting point for the Assessing Officer to ascertain and verify the true and correct position. The Assessing Officer will be at liberty to get in touch with the TDS circle, in case he requires clarification or confirmation. He is also at liberty to get in touch with deductors by issuing a notice and compelling them to upload the correct particulars/details. The said exercise must be and should be undertaken by the Revenue *i.e.*, the Assessing Officer as an assessee who suffers in such cases is not due to his fault and can justifiably feel deceived and defrauded. The stand of the Revenue that they can only write a letter to the deductor to persuade him to correct the uploaded entries or to upload the details cannot be accepted. Power and authority of the Assessing Officer cannot match and are not a substitute to the beseeching or imploring of an assessee to the deductor. Section 234E will also require similar verification by the Assessing Officer. In such cases, if required, order under section 154 may also be passed. [Para 50]

CASES REFERRED TO

CIT v. Pranoy Roy [\[2009\] 309 ITR 231/179 Taxman 53 \(SC\)](#) (para 7).

Ms. Premlata Bansal, V.P. Gupta, Anuj Bansal and Nagesh Behl *for the Petitioner. Sanjeev Sabharwal and Puneet Gupta* *for the Respondent.*

JUDGMENT

Sanjiv Khanna, J. - Whether computerisation and Central Processing of Income Tax Returns is a boon or bane is rather sample to answer, as benefits of computerisation easily outweigh and out score any argument to the contrary. Computerization does away with human or manual element and the frailties attached and ensures transparency besides being quick and fool proof. Alas, it is a human element and frailties which have resulted in the present Public Interest Litigation (PIL) which was initiated pursuant to the letter dated 30th April, 2012 written by Anand Prakash, F.C.A. Chartered Accountant. The said letter was treated as PIL and marked to this Court. Subsequently, All India Federation for Tax Practitioner filed the second writ petition on identical or similar lines. For the sake of convenience, we reproduce the letter dated 30th April, 2012 in verbatim:

- "1. I am a regular income tax practitioner. I draw the attention of this Hon'ble Court towards the numerous difficulties faced by Income Tax assessee country wide due to the faulty processing of the Income Tax Returns and the TDS deducted at source and request that certain directions be issued by this Hon'ble Court so that lakhs of tax payers are saved from the harassment in filing revised returns/rectification petitions every year.
2. The Income tax assessee filing Income Tax returns, on receipt of intimations u/s 143(1), generally are required to pay huge demands which are created because of mismatch of TDS as claimed in the Income Tax return. This is primarily because of the fact that department gives credit of TDS which stands reflected in their online computer records i.e. Form No.26AS.
3. Whenever any Department/Govt Office/Bank deducts TDS on behalf of the assessee he has to file quarterly statement of TDS deducted, along with PAN of deductee and other details. Even if there is slightest of mismatch in reporting the particulars of deductee, the TDS deducted by the Department will not reflect in the Form 26AS and as such, no credit of TDS will be allowed to the assessee resulting in unnecessary demands and hassles of getting the rectifications done.

4. To get the rectification done, at first the assessee has to request the concerned department to file a revised statement with correct particulars of deductee and only after revised statement is filed, the same will start reflecting in the 26AS and thereafter, the rectification is possible which is a very lengthy procedure. In many cases the concerned department refuses to revise the statement.
5. The department has communicated the demands outstanding for various years in their records to the Central Processing Unit without carrying out the necessary rectifications lying pending at their end and without reconciling their records. Now Central Process Unit while issuing refunds in the later years adjusts demands for earlier years. Sometimes the demands for earlier years may not have been communicated to the assessee. This is totally against the law. To get the necessary rectification done the assessee has to first approach the assessing officer for necessary rectification for that assessment year. Then that will be communicated by the Assessing Officer to the CPC online or as per their records. And thereafter CPC would issue refund for the Balance amount.
6. The Returns of the assesses who have expired are filed by legal heirs and in case of refund the same is issued by CPC in the name of dead person only. This causes great harassment to get the same rectified online or through assessing officer.
7. In case of ITR filed in ITR 4S by the assessee CPC is not considering the taxes paid by the assesses even if they are being reflected in Form 26AS. This is some technical problem in their software.
8. Assesses who are filing their Income Tax return u/s 44AD are not obliged to pay any Advance Tax as per the provisions of the Income Tax Act, 1961. But, while processing the Income Tax returns CPC is charging interest u/s 234B, 234-C in all such cases which is causing unnecessary rectification and paper work as the same should not be levied at all.
9. If an assessee has duly paid the taxes due to the Income Tax Department u/s 140-A, but he defaults in filing of return within the prescribed period of time, CPC is still charging interest u/s 234A from the date of payment till the filing of Income Tax Return. The Hon'ble Supreme Court in the case of *Pranob Roy* as reported in 309 ITR 231 has held that interest is compensatory in nature and as such no interest should be charged when the taxes stands paid either as Advance Tax or as self assessment tax.
10. During the filing of TDS return by deductor there is possibility of mistake like PAN being incorrectly mentioned, challan No. being incorrect of Assessment Year being wrongly

mentioned by the deductor and also that no TDS return has been filed. In this case TDS of deductee will not be shown in Form 26AS & credit will not be allowed by the Income Tax Department. Whereas there is no fault of deductee any where.

11. There is possibility that bank punches the wrong details like TDS No., Challan No. etc. In this case there will error in processing the TDS return filed by deductor. So, TDS amount will not reflect in Form 26AS (Pan Data) with NSDL and credit will not allow to deductee whereas TDS was deducted by the deductor.
12. In the facts and circumstances, it is prayed that suitable directions be issued to the Income Tax Department, to mitigate the hardship of lakhs of tax payers."

2. By order dated 4th May, 2012, notice was issued to the Union of India, Ministry of Finance, Central Board of Direct Taxes, Chief Commissioner of Income Tax, Delhi-I and Director General of Income Tax (Systems), who were impleaded as respondent Nos. 1 to 4. By the same order, the respondents were directed to revert the averments in the letter and specific response was sought on the following aspects:

- (1) Whether procedure under Section 245 of the Income Tax Act, 1961 is being followed before making adjustment of refunds and whether assessee are being given full details with regard to demands, which are being adjusted.
- (2) Whether the Revenue is taking caution and care to communicate rejection of TDS certificates and intimation under Section 143(1) in case any adjustment or modification is made to taxes paid, either as advance tax, self assessment tax or TDS.
- (3) Whether and what steps are taken to verify and ascertain that the old demands against which adjustment is being made was communicated to the assessee?
- (4) What steps have been taken to ensure that the deductors correctly upload the TDS details/particulars on the Income Tax website?
- (5) What is the remedy available to the assessee and can he/she approach the Department in case the deductor fails to correctly upload the particulars in his/her cases?
- (6) Whether an assessee can get benefit of TDS deducted or/and paid but not uploaded by the deductor and procedure to claim the said benefit?"

3. The respondents were directed to file counter affidavit providing full particulars regarding :

- (i) Number of assessees where income tax refund in the last year has been adjusted against demand for earlier years.
- (ii) The quantum adjusted.
- (iii) Cases/instances in which action has been taken against deductors, who in spite of request made by the assessee have not correctly uploaded the TDS details.(In respect of Delhi jurisdiction).

The first two figures/particulars will be furnished on the basis of computerized records maintained by the Income Tax Department on their system. If no such record is maintained/available on the system, it shall be indicated and the respondents need not furnish the said details."

The order dated 4th May, 2012, also refers to difficulties with regard to PAN card numbers. This aspect has not dealt with and is left open, if required and necessary to be examined in another case.

4. On 30th May, 2012, another detailed order was passed as certain aspects/questions were highlighted. The point raised were crystallized for the purpose of counter affidavit to be filed by the respondents and read:-

- "(i) Whether it is possible to have a centralized window for receipt of applications in case benefit of TDS certificate is refused or refund due has been adjusted against a demand for a previous year? The application once received should be processed within a specified time frame and the assessee should be informed by post.
- (ii) Whether single Window Counter can be set up for assessees to make complaints that the deductor has not correctly uploaded the details as a result of which the assessee is not getting the credit of the TDS?
- (iii) (a) Nagesh Kumar Behl, who has moved an application being C.M. No.7309/2012 has stated that the problem regarding adjustment of refunds where even no tax demand for earlier year was pending has arisen because the Assessing Officers have failed or neglected to upload correct data. The Assessing Officers have uploaded the data on the basis of Section 143(1) intimation without verifying/ referring to the rectification order/ benefit subsequently granted. The assessees are put to inconvenience and expenditure is incurred on visits as incorrect data has been loaded. Thus for the fault of the Assessing Officer in uploading correct and accurate data, the assessees are penalized and suffer harassment.
- (b) This is a serious matter. It is alleged that the demands have been uploaded in the server

for several assessment years, though no amount/demand is payable. It is stated that the uploading/ demand created, is contrary to the official records and wrong as the Assessing Officers have failed and neglected to correctly upload the data despite instructions of the Board. It will be stated whether this correct and what action has been taken or contemplated by the Board?

- (iv) Whether it is possible to upload and mention on the website details of intimation issued under Section 143(1) of the Income Tax Act, 1961 ("Act", for short) with particulars like amount adjusted, TDS or taxes which have not been credited, when and how the intimation was communicated/ served?
- (v) The return itself is treated as an intimation under Section 143(1), unless the Assessing Officer makes adjustments. In case adjustment is made, the Assessing Officer is required to communicate his order under Section 143(1). The general complaint/ grievance is that intimation is not communicated to the assessee even in cases of adjustments. If this is correct, what steps have been taken to remedy the said grievance?
- (vi) Whether prior intimation/ information is being sent to the assessees before adjustment of refund as per Section 245?
- (vii) Under the Act benefit of TDS can be taken in the year in which the income on which TDS deducted is assessed and shown as assessable. There can be mismatch between the year in which the deductor has deducted the tax and the assessment year in which the assessee had declared the said income. The online form/ details do not take care of such cases.
- (viii) There are several cases where the deductors do not fill up the correct details of the deductee. In such cases the option is given to the deductor to rectify but the said process is very cumbersome. The respondents will examine whether their software can be programmed to refuse/ reject uploading of incorrect data, thus compelling the deductor to feed correct information and the deductor can come to know that the particulars filled up are incorrect and require rectification.
- (ix) Whether department has informed the deductors about incorrect details and has asked them to rectify the errors within a time period? In case of failure, what action is taken? What happens when a complaint is made by the deductee?
- (x) Whether the payment of interest on refund under Section 244A is incorporated in the software itself so that when the refund due is calculated it is inclusive of interest, if payable. It

is also pointed out that in many cases there is delay between date of determination of refund and issue of the refund cheque/ transfer but interest for said period is not paid.

- (xi) Even otherwise refund due are not paid with interest. Whether, the application/request for interest can be entertained by post or by email and answered within a specified time frame?
- (xii) It is pointed out that without password and user name, online returns cannot be filed. It is stated that in many cases password or user name get misplaced or are forgotten. It is very difficult to get a response and reply from the authorities regarding the user name and password. What is the procedure in such cases and whether any time frame is fixed for response to such requests? What is the remedy for the assessee in case there is delay and lapse on the part of the authorities in furnishing password/ user name?
- (xiii) The respondents shall examine and state whether on line viewing of Form 26 AS can be made easier and without use of password and the details available made more elaborate and complete.
- (xiv) The information and advantage of Rule 37BA of the Income Tax Rules, 1962 must be disseminate and published for the benefit of assessee public and deductors so that assessee can claim benefit of tax deducted at source in respect of income which is assessable in his hand."

5. Thereafter the respondents filed their counter affidavit dated 27th July, 2011 on 28th July, 2011. The respondents have also filed additional affidavits thereafter in response to queries, and questions which are dated 30th November, 2012, 29th January, 2013 and 5th March, 2013.

6. In our order dated 31st August, 2012, we emphasized that two specific problems being faced by the taxpayers were being examined and considered. The first was the difficulties faced by the taxpayers relating to credit of Tax Deducted at Source i.e. TDS which stands paid by the deductors. This amount is deducted from the income earned by the assessee but as noticed for several reasons which may not be attributable to the taxpayers/assesses, they denied credit and, therefore, may have to pay double tax. This is not warranted and acceptable. Further the assessee suffer harassment and inconvenience both from the Department and the deductor. The second category consists of wrong or unpayable "past demands or arrears" which have been uploaded in the Central Processing Unit (CPU) at Bengaluru, resulting in adjustment of said arrears from the refund paid/payable in the subsequent years.

7. However, two issues were specifically directed to be left out and it was stated in our order dated 31st August, 2012 that these would not be addressed in these PIL/writ petitions. The first issue relates to non-implementation of the decision of the Supreme Court in *CIT v. Pranoy Roy* [\[2009\] 309 ITR 231/179](#)

[Taxman 53](#), which as per the Revenue cannot be applied. The second issue is more contentious and relates to whether an assessee is entitled to credit of TDS which has been deducted by a deductor but not paid or credited to the Government. These two issues, it was observed can be taken up by individual assesses and it would not be proper to entertain a Public Interest Litigation on these aspects. In our order dated 31st August, 2012, we clarified that the PILs have not been entertained to decide individual claims but in view of the general problems being faced by most taxpayers specifically by small taxpayers regarding issue of refunds, which are denied for bogus or wrong demands/arrears or incorrect record maintenance and the problem in getting full credit of the tax which has been deducted from the income and paid/deposited with the Revenue. The problem was apparent, real and enormous and had escalated because of centralised computerisation and problems associated with the incorrect and wrong data which was uploaded by the tax deductors or payers and the Assessing Officers. The issue was of general governance, failure of administration, fairness and arbitrariness. The magnitude of the problem and the number of taxpayers adversely affected thereby is apparent from the counter affidavit itself. Respondents have stated that 43% and 39% of the returns filed by the deductors in Delhi zone for the financial year 2010-11 and 2011-12 respectively were defective. This effectively means that the assessee would not get credit of the tax deducted from their incomes by the deductors. Rejection of TDS or failure to get credit of TDS which has been deducted and paid, huts the assessee and puts him to needless harassment, inconvenience and costs. It also gives bad name to the Revenue. The problem being systematic and institutional has to be addressed on a general scale. On the issue of refunds, the respondent do not dispute and admit the position that the data uploaded in the Centrally Processing Unit, Bengaluru has errors and faults. In the counter affidavit, it is stated that Rs. 2.33 lac crores is due and payable, as per the data uploaded by the Assessing Officers towards past arrears i.e. arrears payable on or before 31st March, 2010. This is a substantial amount. Arrears, if payable, must be paid. However, the position is that the taxpayers are claiming and stating that arrears have been wrongly shown and the Assessing Officers have not correctly uploaded the data. As noted below, this is partly correct. The respondents also accept that the "past arrears" as uploaded may not be correct. They have not quantified the amount. The magnitude and the number of assesseees adversely affected, can be appreciated from the figure of Rs. 2.33 lac crores. Further, as per the counter affidavit on the basis of this data for one assessment year alone Centrally Processing Unit, Bengaluru has made about 23 lacs adjustments and the taxpayers have been denied the refund claim i.e. the refund amount has been reduced or set off against the arrears. This effectively means that 23 lac assesseees have been denied refund or have been refused full refund on account of past arrears etc. The facts noticed above justify issue of notice and the orders which have been passed and we are now passing to activate and impress upon the Revenue to take remedial and effective action.

8. At the outset, we agree and accept that the respondents have taken a right decision to computerise the income tax records, have Central Processing Unit for processing of returns and issue of refunds. Besides, these steps relate to policy and fall within the exclusive domain of the respondents. These steps have to

be appreciated as they ensure transparency, openness, eliminate high handedness and curtail corruption/red tapism.

UPLOADING OF WRONG OR FICTITIOUS DEMAND

9. Prior to 31st March, 2010, Income Tax Returns were examined manually and the respondents did not have centralised computerised data or record of the demands outstanding against a particular assessee. Each Assessing Officer manually maintained a Demand and Collection Register (D&CR, for short). In the counter affidavit, it is stated that the Standing Committee on Finance and Demands for Grants (2009- 10) of the Ministry of Finance (Department of Revenue) had recommended uploading of arrears of demand in the CPU. On 18th March, 2010, the committee was constituted to put in place Management Information System (MIS) for collating and retrieving of data concerning appeal, disposal and recovery etc. In order to carry out the mandate, Chief Commissioners were asked to devote one entire month for house-keeping work with special emphasis on physical verification of demands and thereafter create a manual D&CR for the financial year 2010-11. CBDT instructions dated 28th October, 2010, were issued for steps to be taken by the field formation and for verification of arrears. The aforesaid exercise had to be completed by the Assessing Officer before 30th May, 2010 and a certificate was to be issued by them that they had verified the entries furnished. Range Heads were directed to form Inspection Team of officers and staff to verify and to give a certificate that verification of demand was complete and demand had been correctly carried forwarded. This inspection team had to complete this exercise by 15th June, 2010 and compliance report by the Chief Commissioner (CCS) was to be sent to the CBDT by 30th June, 2010.

10. In spite of the said effort and direction, the CBDT/Board accepts and admits the position that incorrect and wrong demands have been uploaded. This is clear from the further directions which have been issued by the Board to the Assessing Officers on 30th September, 2010, 9th November, 2010 and 15th February, 2012. The aforesaid demands relate to the period on or before 31st March, 2010. In the counter affidavit, it is indicated that 46.34 lac entries of demand aggregating to Rs. 2.32 lac crores have been uploaded on the CPC arrear demand portal by the Assessing Officers.

11. Office of the Commissioner of Income Tax, Bengaluru, realising that huge amount has been claimed as tax arrears, had written a letter dated 21st August, 2012, to all Chief Commissioners. The relevant portion of the said letter reads as under:

"Kind reference is invited to the above, wherein the assessing officers have been instructed to verify and reconcile the demands where such demand or adjustment thereof by CPC is disputed by the taxpayer. They have also been advised to upload amended figure of arrear demand on the Financial Accounting System (FAS) portal of Centralized Processing Center (CPC), Bengaluru wherever there is balance outstanding arrear demand still remaining after aforesaid correction/reconciliation.

Against the arrear demands uploaded by the assessing officers CPC has collected demands to the tune of Rs.4800 crores by way of adjustment of refunds. The particulars of adjustment already done by CPC in specific cases need to be taken into account by the assessing officers in the course of verification/reconciliation of demands at their end. Besides, the assessing officers have also to taken into consideration the regular tax payments (minor head 400) made by the assessee to arrive at the correct outstanding demand. As the reconciliation has to be done by a large number of assessing officers of respective CCIT(CCA) region there is a need of supervisor and monitoring of this activity by the CIT(CO)."

12. The letter points out two problems. Firstly, there is problem about the verification and reconciliation of demand which had been uploaded by the Assessing Officer in the CPU. It has been pointed out that these demands were being disputed by the taxpayers. The Assessing Officers were advised to upload amended figures after correction and reconciliation. Secondly tax demand to the tune of Rs.4800 crores had been adjusted by the CPU by way of adjustment of refunds. This adjustment accordingly should be duly reflected and shown in the record maintained by the individual Assessing Officers. On a reading of the said letter, one can see and understand the concern and anguish expressed on account of uploading of incorrect and wrong data in the CPU and the problem faced by them and in turn problems faced by the assessee. The letter specifically indicates that demands recovered were not being recorded in the records maintained by the Assessing Officer and credit was not duly reflected in the record of the Assessing Officer.

13. The CBDT, after issue of notice in the writ petition, has issued Circular No. 4 of 2012, which read as under:

"The Board has been apprised that in certain cases the assesseees have disputed the figures of arrear demands shown as outstanding against them in the records of the Assessing Officer. The Assessing Officers have expressed their inability to correct/reconcile such disputed arrear demand on the ground that the period of limitation of four years as provided under sub section (7) of section 154 of the Act has expired.

Further, in some cases, the Assessing Officers have uploaded such disputed arrear demand on the Financial Accounting system (FAS) portal of Centralized Processing Centre (CPC), Bengaluru which has resulted in adjustment of refund arising out of processing of Returns against such arrear demand which has been disputed by such assesseees on the grounds that either such demand has already been paid or has been reduced/eliminated in the appeals, etc. The arrear demands, in these cases also were not corrected/reconciled for the reason that the period of limitation of our years has elapsed.

2. The Board, in consideration of genuine hardship faced by the abovementioned class of cases, in exercise of powers vested under Section 119(2)(b) of the Act, hereby authorise the Assessing Officers to make appropriate corrects in the figures of such disputed arrear demands after due

verification/reconciliation and after examining the same on merits, whether by way of rectification or otherwise, irrespective of the fact that the period of limitation of four year as provided under Section 154(7) of the Act has elapsed.

3. In view of the above the following has been decided:-

In the category of cases where based on the figure of arrear demand uploaded by the Assessing Officer but disputed by the assessee, the Centralised Processing Centre (CPC), Bengaluru has already adjusted any refund arising out of processing of return, the jurisdictional assessing officer shall verify the claim of the assessee on merits. After due verification of any such claim on merits, the Assessing Officer shall issue refund of the excess amount, if any, so adjusted by CPC due to inaccurate figures of arrear demand uploaded by the Assessing Officer. The Assessing Officer, in appropriate cases, will also upload amended figure of arrear demand on the Financial Accounting System (FAS) portal of Centralised Processing Center (CPC), Bengaluru wherever there is balance outstanding arrear demand still remaining after aforesaid correct/reconciliation.

In other cases, where the assessee disputes and requests for correction of the figures of arrear demand, whether uploaded on CPC or not uploaded and still lying in the records of the Assessing Officer, the jurisdictional assessing officer shall verify the claim of the assessee on merits and after due verification of such claim, will make suitable correction in the figure of arrear demand in his records and upload the correct figure of arrear demand on CPC portal.

5. It is specifically clarified that these instructions would apply only to the cases where the figures of arrear demand is to be reconciled/corrected-whether such arrear demand has been uploaded by the Assessing Officer on to Financial Accounting System (FAS) of CPC or it is still in the records of the Assessing Officer."

14. A reading of the circular shows that the burden is put on the assessee to approach the Assessing Officers to get their records updated and corrected. In the given situation perhaps this may be the easiest and most convenient option available, but this should not be a ground for the Assessing Officer not to suo motu correct their records and upload correct data. Each assessee has a right and can demand from the respondents that correct and true data relating to the past demands should be uploaded. CBDT should and must endeavour and direct the Assessing Officers to upload the correct data. The CBDT has already issued Management of Arrear Demand manual for the Assessing Officer. The real issue is that the Assessing Officers must comply and follow the said manual and upload the correct and true data. Filing of applications under Section 154 i.e. application for rectification and correction by the assessee would entail substantial expenses on the part of the assessee who would be required to engage a counsel or advocate or make repeated visits to the Income Tax office for the said purpose. This would defeat the main purpose behind computerisation i.e. to reduce involvement of human element.

15. As per Citizen Charter on the website of Income Tax Department, refund along with interest in case of electronically filed returns should be made within six months. In case of manually filed returns, refund should be made within nine months. The time commences from the end of month in which the return/application is received. Similarly, the Citizen Charter states that a decision on the rectification application under Section 154 will be made within a period of two months. The Board has, however, issued instructions that rectification application under Section 154 should be disposed of within 4/6 months. There is a general grievance that the Assessing Officers do not adhere to the said time limits and the assesseees are invariably called upon to file duplicate applications or new applications in case they want disposal. It is stated that there are no dak or receipt counters or register for receipt of applications under Section 154. Thus there is no record/register with the Assessing Officer with details and particulars of application made under Section 154, the date on which it was made, date of disposal and its fate. Noticing this fact in the order dated 5th February, 2013, it was directed that the respondents must examine the necessity for proper dak/receipt counters for receipt of applications under Section 154 by hand or by post. It was observed that it will be desirable that each application received should be entered in a diary/register and given a serial number with acknowledgement to the applicant indicating the diary number. It was also suggested that details of applications under Section 154 should be uploaded on the website as this would entail transparency. The website should indicate the date on which the application was received and date of disposal of the application by the Assessing Officer concerned.

16. In the affidavit filed on 5th March, 2013, the respondents have stated that they have "recently" prescribed a register for receipt of rectification applications. The said register has various columns namely, date of disposal, date of service of rectification application, demand/refund etc. This is the right step but it must be ensured by the Board that the registers are made available to all Assessing Officers or at the dak counters. The said registers will be made available to the dak counters and the Assessing officers within two months, if not already provided. The Board will also issue instructions that all Assessing Officers and dak counters shall henceforth in the said register, enter and allocate a serial number on the rectification applications and the date of receipt and the serial number will be mentioned on the acknowledgement, which is issued to the assessee. Uploading of the details of the said registers as stated in the affidavit should be made online preferably within a period of six months. This, we reiterate would be in accordance with the mandate of the Citizen Charter of the Department which states that the respondents believe in equity and transparency.

17. In the counter affidavit filed on 5th March, 2013, it is stated that Aayakar Seva Kendras provide for single window service to tax payers for receipt of Dak/grievance and paper returns and applications under Section 154 are also within the scope of Aayakar Seva Kendras. Information in this regard will be disseminated and informed to the assesseees, who can take advantage and benefit of the same. It is stated that there are already 75 Aayakar Seva Kendras and 57 more such Kendras are being set up in

the current year. Similarly, it is stated that Sevottam Aayakar Seva Kendras are being set up in 112 income tax offices.

18. Each application under Section 154 has to be disposed of and decided by a speaking order. This is the mandate of the Act. The order has to be communicated to the assessee and there is a relevant column to be filled in the register, which is now required to be maintained. The Board should issue specific directions to ensure that there is full compliance of the said requirements and directions by the Assessing Officers, Dak counters and Aayakar Sewa Kendras. This is the first mandamus or direction we have issued in the present judgment.

ADJUSTMENT OF REFUND CONTRARY TO THE MANDATE OF SECTION 245 OF THE INCOME TAX ACT

19. Section 245 of the Act empowers and authorises an Assessing Officer to adjust refunds against pending demands and arrears, and reads as :

"245. Set off of refunds against tax remaining payable.-Where under any of the provisions of this Act a refund is found to be due to any person, the Assessing Officer, Deputy Commissioner (Appeals), Commissioner (Appeals) or Chief Commissioner or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against the sum, if any, remaining payable under this Act by the person to whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under this section."

20. The respondents in their counter affidavit have accepted that the Board from time to time has issued directions that the said Section and the procedure prescribed should be strictly adhered to. Reference is made to instruction Nos. 1952, 1969 and 1989 dated 14th August, 1998, 20th August, 1999 and 20th October, 2010 respectively. Another instruction CPC No. 1 dated 27th November, 2012 has been issued recently. However, in the counter affidavit filed on 28th July, 2012 two conflicting or contradictory stands were taken. In one of the paragraphs of the counter affidavit, the respondents have stated as under:

"Accordingly, it was again reiterated that the provisions of section 245 of the I.T. Act, 1961 must be followed and *written intimation must be sent to the assessee before adjusting refund of the outstanding demand and any lapse in this regard shall be viewed seriously*. The CCsIT/DGsIT/CsIT were direct to ensure compliance of the aforesaid direction. Thus, enough safeguards have been provided not only in the I.T. Act, 1961 but also in the Instructions issued by the CBDT" (emphasis supplied)

21. The aforesaid statement reflects the correct position in law as Section 245 mandates and envisages prior intimation to the assessee so that he/she can respond before any adjustment of refund is made towards the demand relating to any other assessment year. Thus, an opportunity of response/reply should be given and after considering the stand and plea of the assessee, justified and valid order or

direction for adjustment of refund can be made. The Section postulates two stage action; prior intimation and then subsequent action when warranted and necessary for adjustments of the refund towards arrears.

22. In the next paragraph of the counter affidavit, the respondents, however, have taken a different stand on adjustment of refunds by CPU, Bengaluru and have stated as under:

"After handing over of old demands to the CPC and commencement of processing of returns by CPC, the procedure u/s 245 of the Income Tax Act, 1961 is being followed by CPC before making adjustment of the refunds and assesses are being given full details with regard to the demands which are being adjusted. *The intimation u/s 143(1) issued from CPC incorporates the full details of the existing demands that the adjusted against the refunds. Further, when the processing of a return at CPC results in demand, the communication u/s 245 is incorporated into the intimation itself.* As far as the demands uploaded by the AOs to CPC portal are concerned, CPC has already issued a communication of the taxpayers through e-mail (wherever e-mail address is available) and by speed post informing him the existence of the demand in the books of the AO and that such demand is liable for adjustment against refund u/s 245 of the IT Act, 1961. As on dated 14.6 lakh such communications have been sent through e-mail and 8.33 lakh communications have been sent through speed post." emphasis supplied)

23. The said paragraph accepts that when a return of income processed under 143(1) at Central Processing Unit at Bengaluru, the computer itself adjusts the refund due against the existing demand, i.e., there is adjustment but without following the two stage procedure prescribed in Section 245 of the Act. In these circumstances, in the order dated 31st August, 2012 we had passed the following interim order:

"13. We issue interim direction to the respondents that they shall in future follow the procedure prescribed under Section 245 before making any adjustment of refund payable by the CPU at Bengaluru. The assessee must be given an opportunity to file response or reply and the reply will be considered and examined by the Assessing Officer before any direction for adjustment is made. The process of issue of prior intimation and service thereof on the assessee will be as per the law. The assessee will be entitled to file their response before the Assessing Officer mentioned in the prior intimation. The Assessing Officer will thereafter examine the reply and communicate his findings to the CPC, Bengaluru, who will then process the refund and adjust the demand, if any payable. CBDT can fix a time limit for communication of findings by the Assessing Officer. The final adjustment will also be communicated to the assessee."

24. The said interim order is confirmed. We notice that the respondents have taken remedial steps to ensure compliance of Section 245 of the Act as they now give an option to the assessee to approach the Assessing Officer. This is the second mandamus which we have issued. As noticed above, the interim order passed in the writ petition dated 31st August, 2012 has been implemented.

25. The problem relating to "past adjustment" before passing of the interim order on 31st August, 2012, still persists and has to be addressed. Noticing this fact in the order dated 31st August, 2012, we had recorded as under:

"14. This brings us to the problem where adjustments of refund has been made by the CPC, Bengaluru, without following the procedure prescribed under Section 245 of the Act and adjustment has been made for non-existing or fictitious demands. Obviously, the Revenue cannot take a stand that they can make adjustments contrary to the procedure prescribed under Section 245 of the Act based on the wrong data uploaded by the Assessing Officers. Question of payment of interest also arises. However, before issuing final directions in this regard, an affidavit as directed above explaining the procedure adopted by them should be brought on record. Opportunity is given to the Revenue to adopt a just and fair procedure to rectify and correct their records and issue refunds with interest without putting a harsh burden and causing inconvenience to the assessee."

26. In spite of the opportunity given to the Revenue to take steps, prescribe, adopt a just procedure, to correct the records, etc., nothing has been done and they have not taken any decision or steps. The affidavits filed subsequently after 31st August, 2012, are silent on this specific point. In these circumstances, we direct and issue the third mandamus and direction which will be applicable only to cases where returns have been processed by the CPC Bengaluru and refunds have been fully or partly adjusted against the past arrears while passing or communicating the order under Section 143(1) of the Act, without following the procedure under Section 245 of the Act. In such cases, it is directed that:-

- A. All such cases will be transferred to the Assessing Officers;
- B. The Assessing Officers will issue notice to the assessee which will be served as per the procedure prescribed under the Act;
- C. the assessee will be entitled to file response/reply to the notice seeking adjustment of refund;
- D. After considering the reply, if any, the Assessing Officers will pass an order under Section 245 of the Act permitting or allowing the refund.
- E. The Board will fix time limit and schedule for completing the said process.

27. There are three reasons why we have issued the said direction. Firstly, the respondents accept and admit the position that wrong and incorrect demands have been uploaded in the CPC Bengaluru. Secondly, the respondents have not followed the mandate and requirement of Section 245 of the Act before making the adjustment. The two stage process with the opportunity and right of the assessee to submit a reply before the adjustment is made, has been denied. CPC Bengaluru did not entertain or

accept any application of the assessee questioning past arrears uploaded in their system as they are not custodian of past records. CPU Bengaluru entertain on-line applications but do not entertain physical or hard copy applications. Assessing Officer similarly did not entertain any application by the assessee on the ground that the order under Section 143(1) was passed by the CPC Bengaluru and they do not have the files/return with them. Thus, the problem was created and caused by the respondents who did not realise the effect and impact of incorrect and wrong arrears being uploaded in CPU Bengaluru and did not follow the statutory requirements of Section 245 of the Act.

28. We clarify that the aforesaid directions are only applicable to cases where two stage procedure under Section 245 of the Act has not been followed and not to cases where procedure under Section 245 of the Act was followed.

29. We are aware that this process may involve some expenditure and paper work in about substantial number of cases but as noticed above, the situation has arisen is due to the lapses on the part of the Assessing Officers and failure to follow Section 245 of the Act. The procedure under Section 245 of the Act is mandatory, just and fair and the assessee cannot be made to suffer for the incorrect or wrong uploading of arrears and wrong and incorrect adjustment of refund on the part of the respondents.

30. There are two more issues connected with this question. The first issue relates to interest under Section 244A of the Act. Revenue's stand is that interest under Section 244A is not payable on self-assessment tax but is payable on advance tax and TDS. The respondents have further stated that interest is paid from 1st day of April of the assessment year till the date on which the refund is granted. We are not examining the said stand of the Revenue and leave these questions open.

31. In the affidavit filed on 29th January, 2013, the respondents have stated as under:-

"Where an assessee makes a mistake in the claim of TDS in the e-return and the return is processed and a demand is raised and subsequently the assessee rectifies the mistake in the claim and files an online rectification application, the same is processed and on any excess TDS refunded, the interest under section 244A is granted as per the I.T. Act after excluding the period of delay attributable to the assessee in terms of sub-section 2 of section 244A of the Income Tax Act, 1961."

32. An assessee can be certainly denied interest if delay is attributable to him in terms of sub-section (2) to Section 244A. However, when the delay is not attributable to the assessee but due to the fault of the Revenue, then interest should be paid under the said Section. False or wrong uploading of past arrears and failure to follow the mandate before adjustment is made under Section 245 of the Act, cannot be attributed and treated as a fault of the assessee. These are lapses on the part of the Assessing Officer i.e. the Revenue. Interest cannot be denied to the assessee when the twin conditions are satisfied and in favour of the assessee. However, even in such cases Assessing officer may deny interest for reasons to

be recorded in writing if the assessee was in fault and responsible for the delay. This is the fourth mandamus which we have issued.

33. The second grievance of the assessee is with regard to the uncommunicated intimations under Section 143(1) which remained on paper/file or the computer of the Assessing Officer. This is serious challenge and a matter of grave concern. The law requires intimation under Section 143(1) should be communicated to the assessee, if there is an adjustment made in the return resulting either in demand or reduction in refund. The uncommunicated orders/intimations cannot be enforced and are not valid. Respondents in the counter affidavit have not dealt with this problem on the assumption that the Assessing Officer who had manually processed the returns and passed the order/intimations under Section 143(1) would have necessarily followed the statute and communicated the said orders/intimations. In case the said orders/intimations under Section 143(1) were communicated or dispatched to the assessee, the directions given by us below would not be a cause for any grievance and will not be a matter of concern for the Revenue. We also accept the contention of the Revenue that where an order under Section 143(1) was sent and communicated to the assessee but could not be served due to non-availability/change of address or other valid reasons, should not be treated at par with cases where there is no communication or no attempt is made to serve the order whatsoever. But when there is failure to dispatch or send communication/intimation to the assessee consequences must follow. Such intimation/order prior to 31st March, 2010, will be treated as non est or invalid for want of communication/service within a reasonable time. This exercise, it is desirable should be undertaken expeditiously by the Assessing Officers. CBDT will issue instructions to the Assessing Officers.

34. The onus to show that the order was communicated and was served on the assessee is on the Revenue and not upon the assessee. We may note in case an order under Section 143(1) is not communicated or served on the assessee, the return as declared/filed is treated as deemed intimation and an order under Section 143(1). Therefore, if an assessee does not receive or is not communicated an order under Section 143(1), he will never know that some adjustments on account of rejection of TDS or tax paid has been made. While deciding applications under Section 154, or passing an order under Section 245, the Assessing Officers are required to know and follow the said principle. Of course, while deciding application under Section 154 or 245 or otherwise, if the Assessing Officer comes to the conclusion and records a finding that TDS or tax credit had been fraudulently claimed he will be entitled to take action as per law and deny the fraudulent claim of TDS etc. The Assessing Officer, therefore, has to make a distinction between fraudulent claims and claims which have been rejected on ground of technicalities but there is no communication to the assessee of the order/intimation under Section 143(1). In the later cases, the Assessing Officer cannot turn around and enforce the demand created by uncommunicated order/intimation under Section 143(1). This is the fifth mandamus which we have issued.

CREDIT OF TAX DEDUCTED AT SOURCE (TDS)

35. This brings us to the second issue regarding credit of TDS or rejection of credit even when the TDS stands paid by the deductor. The said problem can be divided into two categories; cases where the deductors fail to upload the correct and true particulars of the TDS, which has been deducted and paid as a result of which the assessee does not get credit of the tax paid, and the second set of cases where there is a mismatch between the details uploaded by the deductor and the details furnished by the assessee in the income tax return. The details of TDS credited/uploaded in the case of each assessee are now available in form 26 AS.

36. The magnitude of the problem faced by the assesseees on account of mismatch for the first reason can be appreciated if we notice the figures given by the respondents in the counter affidavit filed on 28th July, 2012. It is stated that in Financial Years 2010-11 and 2011-12 as many as 43% and 39% of the TDS returns processed in Delhi zone, where the level of compliance is much higher and better than the national average, were found to be defective. A total demand of Rs. 3000 crores approximately was raised in Delhi zone on the assesseees for the Financial Year 2010-11. After correction were made and the consequent corrective orders were passed, the figure came down to 1900 crores, which is still a substantial amount.

37. In the counter affidavit filed on 28th July, 2012, the respondents had pointed out that the following mismatches are normally noticed:

"

Mismatch relates to	Possible reasons for mismatch	Steps to avoid Mismatch
TDS/TCS	TAN of deductor/collector wrongly quoted in the return	Furnish the correct TAN Number of the Tax Deductor/Collector in the return of Income.
	TDS relating to salary wrongly indicated in the TDS Schedule for other than salary or vice-versa.	Use appropriate Schedules in the Return to report TDS on Salaries, and TDS on Incomes other than Salaries.
	TDS/TCS aggregated under one TAN Number even though TDS/TCS effected by several Deductors/Collectors.	Indicate the TDS/TCS amounts effected by each Deductor/Collector separately in the Schedules provided in the return of Income.
Advance Tax/Self-Assessment tax	BSR code of the bank branch/challan serial number/date of payment/amount paid stated in	Ensure that BSR code of the bank branch/challan serial number/date of payment/amount paid as stated in return

return does not match with information in 26AS.

matches with information available in 26AS.

Advance Tax/Self Assessment Tax Payment particulars filled up wrongly in the Schedules meant for TDS/TCS for vice versa

Use appropriate Schedule in the Return to report Advance Tax/Self Assessment Tax Payment Particulars.

Mistake in PAN, Assessment Year etc. committed while preparing the challan.

Furnish the correct particulars to the bank branch where challan was paid and request for uploading corrected challan data to NSDL.

"

38. It is further stated in the counter affidavit as under:

"Procedure for rectification and correction of mismatch.

- (i) While communicating the intimation after processing of the electronic returns, CPC also intimates to the assessee a report of mismatch of tax credit. The template of such mismatch communication (M5) is appended herewith. On receipt of the same, tax payers are requested to examine their records and correct the error(s) of the nature indicated above.
- (ii) Thereafter the tax payer may approach CPC, Bangalore for 'Rectification' of the earlier intimation based on corrected entries, and the entitled tax credit is allowed to the taxpayer by CPC.

Procedure for giving credit even when there is slight mismatch.

- (i) That the taxpayer is not allowed to credit of taxes even if there is a slightest of mismatch in the TDS particulars reported in form 26AS is not correct because the board has been issuing Instructions to the filed formations for permitting credit of TDS with or without verification depending upon the facts of the case as mentioned in the instructions. In this regard, a reference may be made to Instruction No. 2 of 2011 dated 9th February, 2011 and Instruction No. 1 of 2012 dated 2nd February, 2012.
- (ii) In the said Instructions, the Board has asked the Assessing Officers to accept the TDS claims without verification in all returns where the difference between the TDS claimed and matching TDS amount reported in AS26 data does not exceed rupees one lac. Therefore,

the Department is aware of the inconvenience which may be caused to smaller taxpayers and has taken a very liberal view of the matter."

39. However, the respondents have now reduced this figure of Rs. 1 lac to mere Rs. 5,000/-. Ex-facie, the reasoning that the reduction is to check fraudulent claims by unscrupulous assesses does not appear to be correct as in order to claim credit of TDS the following three core fields must match. These core fields are: name of the assessee, the PAN number and the assessment year. Benefit of Rs. 1 lac or Rs.3 lacs or Rs. 5,000/- is only when there is a discrepancy in the amount and not when there is a discrepancy in any of the three core fields, i.e. name of the assessee, the PAN number and the assessment year. This being a PIL, we are not issuing a specific direction but the Board must re-examine the said aspect and if they feel that unnecessary burden or harassment will be caused to the assessee, suitable remedial steps should be taken.

40. However, we appreciate the stand taken by the respondents that assessee would be given credit even in cases of mismatch or other details not exceeding the specified amounts, in case the name of the assessee, PAN number and the assessment year tally with the details furnished in the return by the assessee and the data uploaded in form 26AS by the deductor. The said stand of the respondents is mentioned in their affidavit filed on 5th March, 2013, the relevant portion of which reads as under:

"1. That it is submitted that according the last order of this Hon'ble Court dated 05.02.2013 four core fields were identified i.e. Name of Assessee, PAN No, Assessment Years and the Amounts and it was further explained that Central Board of Direct Taxes on representation, has directed its officers to give credit of Rs. 5000/- in case of mismatch of amount. However, it needs to be clarified that such relaxation is for the 'amount mismatch' but other three core fields must match."

41. There can be mismatch because of deductor and the assessee may be following different methods of accounting. Further, the assessee may treat the income on which tax has been deducted as income for two or more different years. The respondents must take remedial steps and ensure that in such cases TDS is not rejected on the ground that the amounts do not tally. Of course, while issuing corrective steps, the respondents can ensure that fraudulent or double claims for TDS are not made. We are not issuing any specific directions as it is a technical matter but the respondents should take remedial steps in this regard.

42. Another problem highlighted relates to the use of alphabets 'U', 'M' and 'P' in form 26 AS. The said alphabets stand for 'unmatched challan', 'matched challan' and 'provisional booking'. It is stated that 'provisional booking' is applicable for DDOs, i.e., Government deductors and shall be shortly discontinued. 'Unmatched challans' relate to challans where the report by the deductor in the TDS statement are not found available in the OLTAS data base (OLTAS stands for Online Tax Accounting System). The respondents will fix a time limit within which they shall verify and correct all unmatched

challans. This will necessarily require communication with the deductor and steps to rectify. The time limit fixed should take into account the due date of filing of the return and processing of the return by the Assessing Officer. An assessee as a deductee should not suffer because of fault made by deductor or inability of the Revenue to ask the deductor to rectify and correct. Once payment has been received by the Revenue, credit should be given to the assessee. Board will issue such suitable directions in this regard and this is the sixth mandamus which we are issuing.

43. As noticed above, one of the queries/issues raised in the order dated 30th May, 2012 was as under:

"Whether Department has informed the deductors about incorrect details and had asked them to rectify the errors within a time period? In case of failure, what action is taken? What happens when a complaint is made by a deductee?"

44. The said question was raised as several assesses have a grievance in spite of written letters and approaching the deductors to rectify and correct TDS details and the deductors fail and neglect to do so as the failure does not entail any adverse consequence or action against them. The deductee being taxpayer is harassed but the deductor does not suffer when the deductee does not get benefit of tax paid.

45. The response by the respondents to the said question in their affidavit dated 28th July, 2012 reads as under:

- "(i) When returns are processed u/s 200A by TDS assessing Officers the deductors are informed about the errors in such returns. In case of failure to correct such errors by the deductors, no penal provision is provided under the Act. They can only be persuaded to correct such errors.
- (iii) While processing returns at CPC if any TDS credit claimed by the taxpayer in the return doesn't match with the details uploaded by the deductor list of such mismatches is sent to the tax deductors total of 20119 such communications had been issued by CPC up to April 2011. A deductor-wise consolidated list of such mismatches are sent from CPC to the CIT (TDS) having jurisdiction over the deductor for necessary follow-up with the deductors."

46. The response is unfortunate and unsatisfactory. The response purports to express complete helplessness on the part of the Revenue to take steps and seeks to absolve them from any responsibility. This aspect was highlighted in the order dated 31st August, 2012.

47. In the affidavit filed on 30th November, 2012 the respondents have stated that by Finance Act 2012, Section 234E has been inserted whereby fee of Rs.200/- per day can be levied for default of the deductor/collector for failure to file TDS/TDS statement within due date. Income Tax Rules, 1962 have been modified wherein deductors of all categories are mandated to upload TDS certificates through Tax

Information Network System. The issue whether Section 272 BB can be invoked for defaulting deductors, the respondents have stated as under:

"11. That with regard to this, it is submitted that Section 272BB of the Act is for failure to comply with the provisions of Section 203A. Section 203A relates to the obtaining of TDS account number/TCS account number by the deductor/collector and quoting of these account numbers in challans, certificates, returns etc. Thus, Section 272BB does not come to the aid of the deductees as far as the issue in paragraph 20 of the order is concerned. However, subject to the conditions specified under Section 271H(3)/(4) of the Act, Section 271H(1) provides for levy of penalty for failure to submit statement under Section 200(3)/proviso to Section 206C(3) within the time prescribed or for furnishing incorrect information in the said statements."

48. The Finance Minister in his recent speech while inaugurating the new Central Processing Cell for Tax Deducted at Source at Aayakar Bhawan in Ghaziabad, U.P. had emphasised the need for 'technology driven tax administration' and had stated as under:

"This system will serve two people. As a deductee, I know how much the taxpayer suffers if the TDS is not credited to his or her account."

49. The statement reflects the true and correct position of a pique assessee as a deductee, who has suffered tax deduction at source, but is not given due credit in spite of the fact that the deductor has paid the said tax. The respondents have received their due or money but credit is not given to the person from whose income tax has been deducted. Denying benefit of TDS to a taxpayer because of the fault of the deductor, which is not attributable to the deductee, causes unwarranted harassment and inconvenience. The deductee feels cheated. The Revenue cannot be a silence spectator, wash their hands and pretend helplessness. The problems highlighted here are normally faced by small or middle class taxpayers, including senior citizens as they do not have Chartered Accountants or Advocates on their pay rolls. The marginal amount involved in several cases and inconvenience/harassment involved makes it unviable and futile exercise to first approach the deductor and then the Assessing Officer. Rectification and getting corrections made by the deductor and to get them uploaded is not an easy task. The second phase of filing a revised return or an application under Section 154 is equally daunting and "expensive". Invariably the assessee will write letters or even visit the office of the deductors, but when there is no response or desired result, they get frustrated and suffer. This causes distrust and feeling that the assessee has not been treated justly, fairly and in an honest manner. In our earlier orders, we had emphasised this aspect and asked the Board to take appropriate steps to ameliorate and help the small taxpayers.

50. It is unfortunate that the Board did not take immediate steps after even noticing lacuna and waited till Finance Act, 2012, when Section 234E was enacted. Mere writing of a letter by the Assessing Officer to the deductor by no stretch can be treated as sufficient action on the part of the respondents. Even this, it appears, was done in a few cases as the respondents in the counter affidavit have stated that they have

written 20119 communications to the tax deductors, where TDS credit claimed by the taxpayers did not match with the details loaded by the deductors. The Act empowers and authorises the Assessing Officer to verify the contents of the return and notices can be issued to a third party, i.e. the deductor, to furnish information and details. The deductor, the principal officer or person responsible for making deduction, once issued notice to appear, in most cases, would like to comply with the statutory requirements and also furnish details with regard to TDS deducted from the income of the assessee. The statutory powers given to the Assessing Officer are sufficient and should be resorted to and the assessee cannot be left to the mercy or the sweet will of the deductors. Therefore, we direct that when an assessee approaches the Assessing Officer with requisite details and particulars, the said Assessing Officer will verify whether or not the deductor has made payment of the TDS and if the payment has been made, credit of the same should be given to the assessee. These details or the TDS certificate should be starting point for the Assessing Officer to ascertain and verify the true and correct position. The Assessing Officer will be at liberty to get in touch with the TDS circle in case he requires clarification or confirmation. He is also at liberty to get in touch with deductor by issuing a notice and compelling him to upload the correct particulars/details. The said exercise must be and should be undertaken by the Revenue, i.e. the Assessing Officer as an assessee who suffers in such cases is not due to his fault and can justifiably feel deceived and defrauded. We do not accept the stand of the Revenue that they can only write a letter to the deductor to persuade him to correct the uploaded entries or to upload the details. Power and authority of the Assessing Officer, cannot match and are not a substitute to the beseeching or imploring of an assessee to the deductor. The directions given above, are in accord with the provisions of the Act, namely, Section 133 and TDS provisions of the Act. If required and necessary, the income tax authorities can obtain prior approval from the Director or the Commissioner. The authorities can also examine whether general approval can be given. The said exercise is undertaken by the Assessing Officer while verifying or examining the return. Section 234E will also require similar verification by the Assessing Officer. In such cases, if required, order under Section 154 of the Act may also be passed. Circular No. 4 of 2012 will be equally applicable. This is the seventh mandamus which we have issued.

51. The problem mentioned above will generally arise in cases prior to financial year 2011-12 as the TDS certificate forms had undergone a change and is now required to be down loaded from the Income Tax Portal.

52. In some cases, it is possible that the assessee may not be able to file his Income Tax Return because the deductor has not furnished the TDS certificate. The assessee in question will be at liberty to correspond with his Assessing Officer or the TDS circle pointing out the said factual position and appropriate action, as directed in the aforesaid paragraphs, will be taken by the Assessing Officers concerned.

53. In the affidavit filed on 5th March, 2013, respondents have stated as under:-

"5.1 That with regard to the query raised by the Hon'ble Court in order dated 05.02.2013, following is submitted that

(i) I state that Assessee is being given benefit of 20% in case details are received subsequently by the Department. Assessee has to refer back to the Deductor to correct the details/statement already filed. However, inspite of the Assessee having furnished details to the Deductor, somehow deductor does not upload/correct the statement but Assessee had evidence/necessary proof and documents, then Assessee will be entitled to approach the concerned Assessing Officer and who after due verification will allow such credit."

54. Steps for implementation and to ensure that credit is given to such assessee should be taken by the respondents in this regard and for compliance instructions should be circulated to the Assessing Officer.

55. Thus every effort and attempt must be made to ensure that the assessee should get benefit of the TDS deducted by the deductor and paid to the Government. It would be unfortunate and a matter of regret if an assessee does not get credit, inspite of payment of tax.

56. That facts elucidated above, reveal that there is a communication gap between the assesses and the respondents. We are informed that there is an Income Tax portal where under the head 'My Account', an assessee can make comments and raise grievance. It may be advisable for the respondents to examine grievances as well as the comments by the assessee regarding the inconvenience or harassment being faced by them. Respondents have to be responsive and must meet the genuine aspirations and desire of the assesses. If possible, response/reply to the e-mails should be made. Most of the mandamus/directions given above, are in tune with what has been stated and averred by the respondents in the counter affidavit. On some aspects, we have partly modified what has been accepted and agreed by the respondents. We appreciate and understand that there can be and may be some practical difficulties or the respondents may themselves find a proper or more appropriate solution to the same. Therefore, we permit the respondents or the petitioner All India Federation for Tax Practitioners or others, to move an application for modification/clarification of this order. However, no application by an individual assessee relating to his personal or individual grievance will be entertained. In case, there is non compliance of the directions/mandamus issued above, the individual assessee will be required to approach the writ court for appropriate order or direction. We hope and trust that the respondents will be responsive and comply with the directions mentioned above.

57. In nutshell, we have issued the following directions:-

- (i) Directions given in paragraph 16 to 18 regarding maintenance of register for applications under Section 154, receipt of the said applications and their disposal.

- (ii) We have confirmed the interim directions given in paragraph 13 of the order dated 31st August, 2012. (see paragraphs 23 and 24 above). The said direction, we understand has been implemented.
- (iii) With regard to past adjustments where procedure under Section 245 has not been followed, we have issued directions in paragraphs 26 to 28.
- (iv) With regard to the interest under Section 244 A, we have issued directions set out in paragraphs 31 and 32 that interest should be paid when the assessee is not at fault.
- (v) With regard to uncommunicated intimations under Section 143(1), directions are given in paragraphs 33 and 34.
- (vi) With regard to unverified TDS under the heading 'U' in Form 26AS, directions have been issued in paragraph 42 for verification and correcting unmatched challans within a time period, which should be fixed by the Board keeping in mind the date of filing of return and processing of return by the assessing officer.
- (vii) The seventh direction/mandamus is regarding credit of TDS to an assessee when the tax deducted has been deposited with the Revenue by the deductor. Directions in this regard have been given in paragraphs 50 and 51.

58. The writ petitions are disposed of. The Court appreciates the contribution and efforts of Ms. Prem Lata Bansal, Sr. Advocate, Mr. V.P. Gupta, Advocate and Mr. Nagesh Behl, Chartered Accountant. Mr. Sanjeev Sabharwal, senior standing counsel has also contributed and offered valuable positive assistance to enable us to dispose of the present writ petitions.

P. Sen

*In favour of assessee

Appendix 2

SECTION 154 OF THE INCOME-TAX ACT, 1961 -RECTIFICATION OF MISTAKES - MISTAKES APPARENT FROM RECORDS - PROCEDURE TO BE FOLLOWED IN RECEIPT AND DISPOSAL OF RECTIFICATION APPLICATIONS FILED UNDER SECTION 154

INSTRUCTION NO.3/2013[F.NO.225/76/2013/ITA.II], DATED 5-7-2013

Hon'ble Delhi High Court *vide* Judgment in case of Court On its Own Motion v. UOI and Ors. in W.P. (C) 2659/2012, dated 14.3.2013 has issued several Mandamuses for necessary action by income-tax Department one of which is regarding maintenance of "Rectification Register" in which details like receipt of applications under section 154 of the I.T. Act, their processing and disposal are to be maintained. (Reference: Paras 16 to 18 of the order).

2. In view of the said order, it has been decided by the Board that henceforth all applications received under section 154 of the I.T. Act by the concerned jurisdictional authorities shall be dealt with in the following manner:-

A. Receipt of applications under section 154 of the Income-tax Act, 1961:

A.1. Offices where Aayakar Seva Kendra is Centralized Dak receipt Center

- (i) All offices where Aayakar Seva Kendra ('ASK') is functional, it would be ensured that all applications received under section 154 are duly entered into the system by the ASK and a system generated ASK acknowledgement number shall be given to the taxpayer.
- (ii) The acknowledgement number of application received under section 154 provided to the taxpayer at ASK receipt counter shall be transmitted online to the Assessing Officer while paper application shall be physically forwarded to the Assessing Officer.
- (iii) At places where Aayakar Seva Kendra is non-functional but where ASK-Software is used for purposes of receipt of Dak, the procedure outlined for Aayakar Seva Kendras mentioned above would be adopted in respect of applications under section 154 received by the concerned authority.

A.2. Offices where Dak is received by the jurisdictional Assessing Officer:

Offices where neither Aayakar Seva Kendra is functional nor ASK Software is used for receipt of dak, the applications under section 154 should be received, diarized and acknowledgement number should be

given to the assessee by the receiving jurisdictional. Assessing Officer immediately at the time of filing the application.

B. Maintenance of "Register of Rectifications under section 154" online

B.1. To facilitate action under section 154 in a time bound and transparent manner, all Assessing Officers should enter rectification applications in the "Online Rectification Register" which has been made available in ITD Applications. The procedure to maintain this register online has already been intimated to the field formations *vide* AST Instruction No. 112 dated 29.11.2012 issued by the Directorate of Income-tax (Systems).

B.2. Rectification applications have to be compulsorily uploaded in "Online Rectification Register" by the Assessing Officer on the day application is received by him either through Aayakar Seva Kendra/ASK Software or in his own office. The acknowledgement number provided to the taxpayer at the time of receiving application under section 154 must invariably be entered in "Online Rectification Register" in appropriate column.

C. Disposal of applications under section 154 of the Income-tax Act, 1961:

C.1. As per provisions of Section 154 of the I.T. Act, 1961, each application under that Section has to be disposed of by passing appropriate order within 6 months from the end of the month in which application is received. However, under Citizens Charter of 2010, the service delivery standard in respect of deciding rectification application has been fixed as 2 months. The concerned authorities should therefore, abide by this standard and ensure that rectification applications are decided as far as possible within a period of two months from the end of the month in which application is received.

C.2. Every Rectification application has to be processed through ITD applications only.

C.3. In cases where applications were received through Aayakar Seva Kendra/ASK Software, Assessing Officer should also flag/mark the disposal of rectification application in ASK Software so that its disposed status could be tracked down.

C.4. The order under section 154 of income-tax Act must fulfil all the legal requirements, should be a speaking order and has to be invariably communicated to the taxpayer immediately after its disposal.

3. In respect of e-filed returns, the rectification applications are also filed online. CPC would be required to immediately identify whether action can be taken at its own end or it has to be transferred to the Assessing Officer for necessary action. If CPC is required to take action, it would do so within the time-frame prescribed. On the other hand, if the Assessing Officer is required to dispose it off, he would enter the same in the online rectification register, process it on AST and shall again make necessary entries

therein once the same is disposed off. The prescribed time limit would strictly be adhered to in this case also.

4. All CCsIT/DGsIT are requested to ensure that the above procedure is strictly followed in their charge with immediate effect and the maintenance and updating of online rectification register is monitored by the concerned supervisory officers in their respective charges

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Appendix 3

SECTION 143 OF THE INCOME-TAX ACT, 1961 - ASSESSMENT - GENERAL - IDENTIFICATION OF UNSERVED INTIMATION UNDER SECTION 143(1) FOR CASES PROCESSED PRIOR TO 31-3-2010

INSTRUCTION NO.4/2013 [F.NO.225/76/2013/ITAT.II], DATED 5-7-2013

Hon'ble Delhi High Court vide judgment in case of Court On its Own Motion vs. UOI and Ors. in W.P. (C) 2659/2012 dated 14.3.2013 has issued Seven Mandamus for necessary action by income-tax Department one of which is regarding non-enforcement of Demand where no intimation under section 143(1) of Income-tax Act, 1961 was sent by field-authorities in respect of returns which were processed prior to 31.3.2010.

2. On this issue, Court has observed as under:

"33. The second grievance of the assessee is with regard to the uncommunicated intimations under Section 143(1) which remained on paper/file or the computer of the Assessing Officer. This is serious challenge and a matter of grave concern. The law requires intimation under Section 143(1) should be communicated to the assessee, if there is an adjustment made in the return resulting either in demand or reduction in refund. The uncommunicated order/ intimations cannot be enforced and are not valid. Respondents in the counter affidavit have not dealt with this problem on the assumption that the Assessing Officer who had manually processed the returns and passed the order/intimations under Section 143(1) would have necessarily followed the statute and communicated the said orders/intimations. In case the said orders/ intimations under Section 143(1) were communicated or dispatched to the assessee, the directions given by us below would not be a cause for any grievance and will not be a matter of concern for the Revenue. We also accept the contention of the Revenue that where an order under Section 143(1) was sent and communicated to the assessee but could not be served due to non-availability/change of address or other valid reasons, should not be treated at par with case where there is no communication or no attempt is made to serve the order whatsoever. But when there is failure to dispatch or send communication/intimation/ to the assessee consequences must follow. Such intimation/order prior to 31st March, 2010, will be treated as nonest or invalid for want of communication/service within a reasonable time. This exercise, it is desirable should be undertaken expeditiously by the Assessing Officers. CBDT will issue instructions to the Assessing Officers.

34. The onus to show that the order was communicated and was served on the assessee is on the Revenue and not upon the assessee. We may note in case an order under Section 143(1) is not communicated or served on the assessee, the return as declared/filed is treated as deemed intimation and an order under Section 143(1). Therefore, if an

assessee does not receive or is not communicated an order under Section 143(1), he will never know that some adjustments on account of rejection of TDS or tax paid has been made. While deciding applications under Section 154, or passing an order under Section 245, the Assessing Officers are required to know and follow the said principle. Of course, while deciding application under Section 154 or 245 or otherwise, if the Assessing Officer comes to the conclusion and records a finding that TDS or tax credit had been fraudulently claimed he will be entitled to take action as per law and deny the fraudulent claim of TDS etc. The Assessing Officer, therefore, has to make a distinction between fraudulent claims and claims which have been rejected on ground of technicalities, but there is no communication to the assessee of the order/intimation under Section 143(1). In the later cases, the Assessing Officer cannot turn around and enforce the demand created by uncommunicated order/intimation under Section 143(1). This is fifth mandamus which we have issued."

3. In view of the direction of Hon'ble Court, I am directed to convey that the exercise desired by the Hon'ble High Court in respect of intimations/orders prior to 31-3-2010 as mentioned in Para 33 above may be carried out by 31st August, 2013 positively. Further, the observations made by Hon'ble High Court in Para 33 and Para 34 mentioned above relating to intimations under section 143(1) and disposal of applications under section 154 and also passing of order under section 245, as applicable, may be strictly kept in mind by the Assessing Officer while dealing with such matters.

4. This may be brought to notice of all Officers working under your jurisdiction for necessary and strict compliance within the time-frame prescribed above

Appendix 4

SECTION 199 OF THE INCOME-TAX ACT, 1961 - CREDIT FOR TAX DEDUCTED – CREDIT OF TDS UNDER SECTION 199 TO AN ASSESSEE WHEN THE TAX DEDUCTED HAS BEEN DEPOSITED WITH REVENUE BY DEDUCTOR – DIRECTION OF HON'BLE DELHI HC IN THE CASE 'COURT ON ITS OWN MOTION VS. UNION OF INDIA' IN W.P.(C) 2659/2012 & W.P. (C) 5443/2012* INSTRUCTION NO. 5/2013 [F.NO.275/03/2013-IT(B)], DATED 8-7-2013

1. The CBDT issues instructions with respect to processing of Income-tax returns and giving credit for TDS thereon in the case of TDS mismatch. A few of the instructions on this subject issued in previous years are Instruction No. 1/2010 (25-2-2010) for returns pertaining to A.Y. 2008-09; Instruction No. 05/2010 (21-7-2010), Instruction No. 07/2010 (16-8-2010) and Instruction No. 09/2010 (9-12-2010) for returns pertaining to AY. 2009-10; Instruction No. 02/2011 (9-2-2011) for returns pertaining to A.Y. 2010-11; and Instruction No. 1/2012 (2-2-2012) and Instruction No. 04/2012 (25-5-2012) for returns pertaining to A.Y. 2011-12. The instructions gave decisions and the manner in which the TDS claims were to be given credit while clearing the backlog of returns pending processing. In the cases that did not fall under the specific TDS amount limit or refund amount computed, the residuary clause in these instructions gave the manner of processing those returns and it stated that "TDS credit shall be given after due verification".

2. The Hon'ble Delhi High Court *vide* its judgment in the case '*Court On its Own Motion v. UOI and Ors.* (W.P. (C) 2659/2012 & W.P. (C) 5443/2012 dated 14-3-2013) has issued seven *mandamuses* for necessary action by Income-tax Department, one of which is regarding the issue of non-credit of TDS to the taxpayer due to TDS mismatch despite the assessee furnishing before the Assessing Officer, TDS certificate issued by the deductor.

3. In view of the order of the Hon'ble Delhi High Court (*reference: para 50 of the order*); it has been decided by the Board that when an assessee approaches the Assessing Officer with requisite details and particulars in the form of TDS certificate as an evidence against any mismatched amount, the said Assessing Officer will verify whether or not the deductor has made payment of the TDS in the Government Account and if the payment has been made, credit of the same should be given to the assessee. However, the Assessing Officer is at liberty to ascertain and verify the true and correct position about the TDS with the relevant AO (TDS). The AO may also, if deemed necessary, issue a notice to the deductor to compel him to file correction statement as per the procedure laid down.

4. Thus, the manner laid down by the Hon'ble HC in the above *mandamus* may be one of the method of due verification as mentioned in the various instructions referred in para (1) above.

5. This may be brought to notice of all Officers working under your jurisdiction for compliance.

*See [2013] 31 taxmann.com 31 (Delhi

Appendix 5

SECTION 245 OF THE INCOME-TAX ACT, 1961 - REFUNDS - SET OFF OF REFUNDS AGAINST TAX REMAINING PAYABLE - PAST ADJUSTMENT OF REFUNDS AGAINST ARREARS WHERE PROCEDURE UNDER SECTION 245 WAS NOT FOLLOWED

INSTRUCTION NO. 6/2013 [F. NO. 312/53/2013-OT], DATED 10-7-2013

Hon'ble Delhi High Court *vide* its judgment in case of *Court on its Own Motion v. UOI and Others* in W.P.(C) 2659/2012, dated 14.03.2013 [2013] 31 taxmann.com 31 (Delhi) has issued seven Mandamus for necessary action by the Income Tax Department. One Mandamus is on past adjustments of refunds against the arrears; in particular, where procedure prescribed under Section 245 of the Income-tax Act, 1961 has not been followed.

2. On the above issue, the Hon'ble Court has noted in Para 25 of its order that the problem relating to 'past adjustment' of refunds persists and hence needs to be addressed. The Hon'ble Court has observed as under:

"26. In spite of the opportunity given to the Revenue to take steps, prescribe, adopt a just procedure, to correct the records, etc., nothing has been done and they have not taken any decision or steps. The affidavits filed subsequently after 31st August, 2012, are silent on this specific point. In these circumstances, we direct and issue the third mandamus and direction which will be applicable only to cases where returns have been processed by the CPC, Bengaluru and refunds have been fully or partly adjusted against the past arrears while passing or communicating the order under Section 143(1) of the Act, without following the procedure under Section 245 of the Act. In such cases, it is directed that: -

- A. All such cases will be transferred to the Assessing Officers:
- B. The Assessing Officers will issue notice to the assessee which will be served as per the procedure prescribed under the Act.
- C. The assesseees will be entitled to file response/reply to the notice seeking adjustment of refund.
- D. After considering the reply, if any, the Assessing Officers will pass an order under Section 245 of the Act permitting or allowing the refund.

E. The Board will fix time limit and schedule for completing the said process.

27. There are three reasons why we have issued the said direction. Firstly, the respondents accept and admit the position that wrong and incorrect demands have been uploaded in the CPC, Bengaluru. Secondly, the respondents have not followed the mandate and requirement of Section 245 of the Act before making the adjustment. The two stage process with the opportunity and right of the assessee to submit a reply before the adjustment is made, has been denied. CPC, Bengaluru did not entertain or accept any application of the assessee questioning past arrears uploaded in their system as they are not custodian of past records. CPC, Bengaluru entertain on-line applications but do not entertain physical or hard copy applications. Assessing Officer similarly did not entertain any application by the assessee on the ground that the order under Section 143(1) was passed by the CPC, Bengaluru and they do not have the files/return with them. Thus, the problem was created and caused by the respondents who did not realize the effect and impact of incorrect and wrong arrears being uploaded in CPC, Bengaluru and did not follow the statutory requirements of Section 245 of the Act.

28. We clarify that the aforesaid directions are only applicable to cases where two stage procedure under Section 245 of the Act has not been followed and not to cases where procedure under Section 245 of the Act was followed. "

3. In view of the direction of the Hon'ble Court, I am directed to convey that the exercise desired by the Hon'ble High Court as listed in Paras 26 A, B, C & D above in respect of cases where returns have been processed by the CPC, Bengaluru and refunds have been fully or partly adjusted against the past arrears while passing or communicating the order under Section 143(1) of the Act, without following the procedure under Section 245 of the Act, be carried out by 31st August, 2013 positively.

4. I am further directed to state that the above be brought to the notice of all officers working under your jurisdiction for necessary and strict compliance within the time frame prescribed above

Appendix 6

SECTION 244A OF THE INCOME-TAX ACT, 1961 - REFUNDS - INTEREST ON - PAYMENT OF INTEREST UNDER SECTION 244A WHEN ASSESSEE IS NOT AT FAULT - INSTRUCTION NO. 7/2013 [F.NO.312/54/2013-OT], DATED 15-7-2013

Hon'ble Delhi High Court *vide* its judgment in case of *Court On its Own Motion v. UOI* in W.P.(C) 2659/2012 dated 14-3-2013 [2013] 31 taxmann.com 31 (Delhi) has issued seven *Mandamus* for necessary action by the Income-tax Department. One *Mandamus* is on payment of interest under section 244A of Income-tax Act 1961 when the assessee is not at fault.

2. On this issue, the Hon'ble Court has observed as under:

"31. In the affidavit filed on 29th January, 2013, the respondents have stated as under:-

'Where an assessee makes a mistake in the claim of TDS in the e-return and the return is processed and a demand is raised and subsequently, the assessee rectifies the mistake in the claim and files an online rectification application, the same is processed and on any excess TDS is refunded, the interest under section 244A is granted as per the I.T. Act after excluding the period of delay attributable to the assessee in terms of sub-section (2) of section 244A of the Income-tax Act, 1961.'

32. An assessee can be certainly denied interest if delay is attributable to him in terms of sub-section (2) to section 244A. However, when the delay is not attributable to the assessee but due to the fault of the Revenue, then interest should be paid under the said section. False or wrong uploading of past arrears and failure to follow the mandate before adjustment is made under section 245 of the Act, cannot be attributed and treated as fault of the assessee. These are lapses on the part of the Assessing Officer *i.e.* the Revenue. Interest cannot be denied to the assessee when the twin conditions are satisfied and in favour of the assessee. However, even in such cases Assessing Officer may deny interest for reasons to be recorded in writing if the assessee was in fault and responsible for the delay. This is the fourth *mandamus* which we have issued. "

3. In view of the direction of the Hon'ble Court, I am directed to convey that in no case should interest u/s 244A of the Act be denied to the assessee where the assessee is not at fault. The observation of the Hon'ble High Court in Para 32 above be strictly kept in mind while dealing with such matters.

4. I am further directed to state that the above be brought to the notice of all officers working under your jurisdiction for necessary and strict compliance

2 TIN Call Centre (TCC)

If you need any assistance or clarification, please contact TIN Facilitation Centres near your location. You may also contact the TIN Call Centre (TCC) at:

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Our Values:

