



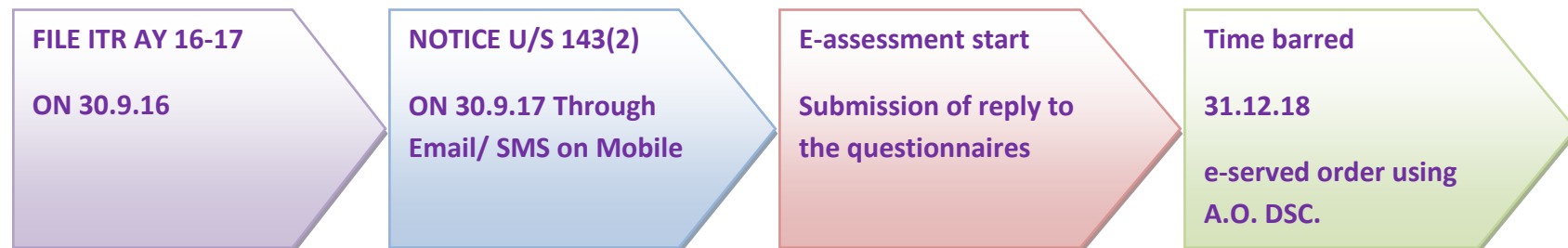
CA. Ashwani Rastogi

No more interactions with tax officials!

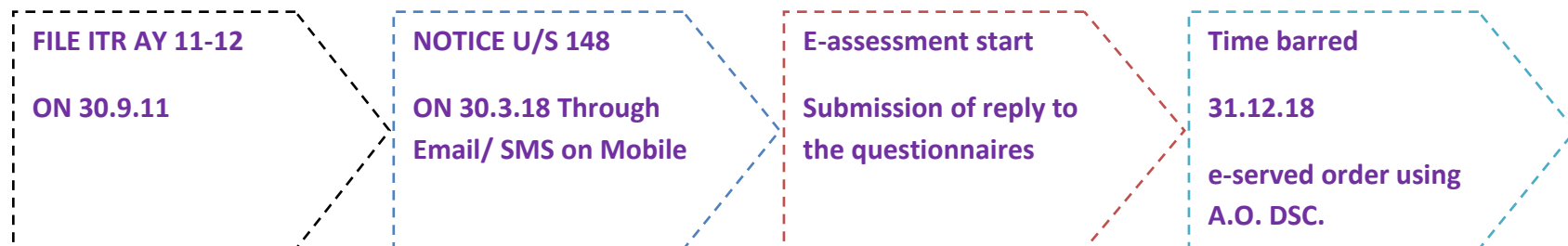
I-T Dept goes online with scrutiny work!

CBDT has issued instruction dated 12th February 2018 to conduct assessment proceedings in scrutiny cases electronically, saying that except for search-related assessments, proceedings in other pending scrutiny assessment cases shall be conducted **only through the 'E-proceeding' functionality in ITBA/e-filing.**

Assesment u/s 143(3)



Reassessment u/s 147/ 143(3)



Salient features of 'E – proceedings' – As stated in letter dated 23rd June 2017 following are the salient features of e-proceedings

- Income tax department has launched e-proceeding facility to as e-governance initiative to facilitate conduct of assessment proceedings
- Simple way of communication without visits to department
- Taxpayer friendly measure would substantially reduce compliance burden for assessee
- E-proceeding will facilitate seamless flow of communication between AO and assessee
- assessee would be able to submit the response along with attachments by uploading the same on e-filing portal
- AO would view submissions electronically through Income Tax Business Application (ITBA)
- E – proceeding will save time of assessee as well as department
- Complete information of all e-submissions made will be available on e-filing portal Environment friendly as assessment will be paperless

The Central Government has been clear on one concept – of using technology in every department, and every facet of Governance, and is also clear on another concept – that machine dependency (use of technology) will reduce corruption.

The CBDT initiated on a pilot basis by stating that email shall be used for communicating with the assessee for sending questionnaire, notices, etc., as well as for receiving responses thereto. The Government constituted a Committee to study the feasibility of the recommendations.

The CBDT has now issued an Instruction [No. 01/2018 dated 12th February, 2018] based on which, assessment of all scrutiny cases (except in case of search cases) will be conducted through e-mode only.

If the assessee objects to it, it will, for the time being, be kept on hold.

In para 4.3, it states that *“Online submissions may be filed till the office hours on the date stipulated for compliance.”* This means that we are still stuck with our traditional approach, which will lead to further litigation as to when it is considered filed, the time in the sent mail or in the received mail. In electronic mode, it should be possible to file 24x7, and accordingly the wordings need to be modified.

Does this mean that all communications have to be sent from the email address of the assessee only?

Does the assessee not have the facility of appointing an authorised representative?

Will the assessee be able to see the order sheet?

Should the assessee not be given a reasonable opportunity to submit the response (as in para 4.4, it states, *“electronic submissions through ‘E-Proceeding’ shall be automatically closed seven days before time barring date.”*), particularly when the information itself is called for, say, just over seven days before time barring?

Hon’ble Finance Minister Arun Jaitley announce in Budget 18 for e-assessment, from the memorandum to the budget:-

New scheme for scrutiny assessment

Section 143 of the Act provides for the procedure for assessment. Sub-section (3) of the said section empowers the Assessing Officer to make, by an order in writing, an assessment of total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

It is proposed to prescribe a new scheme for the purpose of making assessments so as to impart greater transparency and accountability, by eliminating the interface between the Assessing Officer and the assessee, optimal utilization of the resources, and introduction of team-based assessment. These amendments will take effect from 1st April, 2018.

Accordingly inserted three sub-sections into the Income Tax Act, which will have far reaching implications, though it is in the direction of e-assessment, if it gets converted into law, namely Sections 143(3A), 143(3B) and 143(3C).

“(3A) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of **making assessment of total income or loss** of the assessee under sub-section (3) so as to **impart greater efficiency, transparency and accountability** by—

(a) eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the **extent technologically feasible**;

(b) optimising utilisation of the resources through **economies of scale and functional specialisation**;

(c) introducing a **team-based assessment with dynamic jurisdiction**.

(3B) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (3A), by notification in the Official Gazette, **direct that any of the provisions of this Act relating to assessment of total income or loss shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification**:

Provided that **no direction shall be issued after the 31st day of March 2020**.

(3C) Every notification issued under sub-section (3A) and sub-section (3B) shall, **as soon as may be after the notification is issued, be laid before each House of Parliament**.”

[Emphasis supplied]

The proposed Sub-section (3A) is for making assessment. When one speaks of making assessment of total income, it encompasses almost the entire Income Tax Act, right from definition section to computation sections to assessment procedures, i.e., from Chapter I to Chapter XIV. The purpose stated therein are very vague. For example, sub-clause (a) uses the

phrase, “*to the extent technologically feasible*” which can also mean that the Government is not sure whether it will be possible, or we may land up in the manner we landed in GST, or in the initial stages of online filing of income tax returns.

An even more frightening proposal is the insertion of Sub-section (3B), which will empower the Central Government to state by a notification that any provision of the Act relating to assessment of Total Income (for which one has to travel through various Chapters, right from Chapter I up to Chapter XIV) shall not apply or shall apply with exception, modification and adaption as may be specified. One may hope that the power will not be misused or misinterpreted, but by the stroke of a pen, the Income Tax Act can be bypassed. Does a delegated authority, though Central Government, do this? More litigation is sure to be in the pipeline.

Strong turbulence is in store if such unrestricted power is bestowed upon any authority, particularly with the past experience of lack of follow-up and action thereon, on instructions and circulars already issued by CBDT relating to the assessment procedures. Though e-assessment is good on certain fronts, the Government should come out with clear information as well as data on how this amendment to the Income Tax Act will be put in motion, so as to further smoothen the e-assessment, for which the Department has to first put its own house in order, by training its officers, as a majority of them have forgotten the law they are supposed to implement.

Our Comment:-

This new scheme for the purpose of making assessments so as to impart greater transparency and accountability, by eliminating the interface between the AO and the taxpayer, optimal utilisation of the resources, and introduction of team-based assessment. However, there are few issues where clarity is required, e.g. the, term 'team based assessment' is not defined. **Further, a jurisdiction-free assessment implies that a taxpayer residing in one part of a country could be assessed by a tax officer located in another part of the country.** These issues may create significant difficulties, and therefore it would be helpful if these issues will be addressed appropriately in the new scheme.

Recently:-

DIRECTORATE OF INCOME TAX (SYSTEM) instruction dated 19.3.18 relating to Issue of notices under section 142(1)(ii) & (iii) of Income –tax Act 1961 in revised format. This revised new notice format now incorporates the same language as in the 143(2) notice to facilitate the taxpayer to submit the documents and respond electronically and the requirement to visit the office has been removed.

ELECTRONIC ASSESSMENT PROCEEDINGS

- Section 2(23C) of the Income-tax Act:
 - Inserted w.e.f. 01.04.2016 .
 - “*hearing*” includes communication of data and documents through electronic mode
- Board’s letter dated 23.06.2017.
 - Assessment proceedings in scrutiny cases would be conducted electronically through assessee’s account in e-filing website of the Department.

EXCEPTIONS TO E-ASSESSMENTS

- Search related Assessments.
- Where the assessee objects to conduct of assessment proceedings electronically – such cases, for time-being, may be kept on hold.

PROCEDURAL ASPECTS

ENQUIRY BEFORE ASSESSMENT IN ELECTRONIC MODE

- Notice u/s.142(1)(ii) shall be issued electronically and delivered upon the assessee in his e-filing account.
- While filing response, the assessee shall verify it in the manner prescribed under Rule 14 of the Income-tax Rules, 1962.

USE OF DIGITAL SIGNATURE BY THE ASSESSING OFFICER

- All orders/communications/notice issued to the assessee are to be signed digitally by the Assessing Officer.



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
WARD XXX, HYDERABAD

To,
NAME AND ADDRESS
OF ASSESSEE

India

PAN:
XXXXXXXXXX

AY:
2016-17

Dated:
09/02/2018

Notice No :
ITBA/AST/F/142(1)/2017-18/1008747618(1)

Notice Under Sub Section (1) Of Section 142 of the Income Tax Act, 1961

Sir/ Madam/ M/s,

In connection with the assessment for the assessment year 2016-17 you are required to:

- a) Produce or cause to be produced before me at my office on 19/02/2018 at 03:00 PM the accounts and /or documents specified overleaf.
- b) Furnish in writing and verified in the prescribed manner information called for as per annexure and on the points or matters specified therein before me at my office on 19/02/2018 at 03:00 PM.

Yours faithfully,

INCOME TAX OFFICER

WARD XXX, HYDERABAD

ANNEXURE

Furnish the following information:

1. Brief description of the nature of business carried on by the assessee firm.
2. Copy of the Income Tax Return for the Asst. year 2015-16 & 2016-17 alongwith computation of total income and all enclosures.
3. Copy of all the Bank Account Statements maintained by you during the FY 2015-16.
4. Ledger account copies of all incomes received and expenses claimed for financial year 2015-16

INCOME TAX OFFICER
WARD XXX HYDERABAD

(In case the document is digitally signed please
refer Digital Signature at the bottom of the page)

TIME FOR COMPLIANCE

- Submissions to be filed *till the office hours* on the date stipulated for compliance.

ELECTRONIC SUBMISSION OF DOCUMENTS

- Time barring situation:
 - The facility for electronic submission of documents through ‘e-proceeding’ shall be **automatically closed ‘seven days’ before the time barring date.**
- In other situations:
 - The **Assessing Officer shall close the e-submission facility** after mentioning in electronic order sheet that ‘hearing has been concluded’.
 - However, in exceptional circumstances, the concerned Assessing Officer may enable further filing of submission under intimation to Range Head under ITBA.

PARTICULAR PROCEEDINGS MAY BE MANUAL

- Particular proceedings in the assessment proceeding may be conducted manually in the following situations:
 - Where manual books of accounts or original documents have to be examined.
 - Where AO invokes provisions of section 131 of the Act or a notice is issued for carrying out third party enquiries/investigations.
 - Where examination of witness is required to be made by the concerned assessee or the Department.
 - Where a show-cause notice contemplating any adverse view is issued by the AO and the assessee requests for personal hearing to explain the matter.

MAINTENANCE OF 'RECORD'

- As far as possible, Case-records as well as note sheet of proceedings shall be maintained electronically.

THANK YOU

Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

North Block, New Delhi, the 12th of February, 2018

Subject: Conduct of Assessment Proceedings in scrutiny cases electronically-regd.-

Sub-section (23C) of Section 2 of the Income-tax Act, 1961 (Act), applicable from 01.06.2016, provides that *"hearing" includes communication of data and documents through electronic mode*. Accordingly to facilitate conduct of assessment proceedings electronically, vide letter dated 23.06.2017, in file of even number, Board had issued a revised format of notice(s) under section 143(2) of the Act. Para 3 of these notice(s) provided that assessment proceedings in cases selected for scrutiny would be conducted electronically in 'E-Proceeding' facility through assessee's account in E-filing website of Income-tax Department.

2. In accordance with the procedure outlined in revised 143(2) notice(s) for conduct of assessment proceedings electronically, it is hereby directed that except for search related assessments, proceedings in other pending scrutiny assessment cases shall be conducted only through the 'E-Proceeding' functionality in ITBA/E-filing. However, in cases where the concerned assessee objects to conduct of assessment proceedings electronically through the 'E-Proceeding' facility, such cases, for the time-being, may be kept on hold.

3. Further, considering the situation that some of the stations have limited bandwidth, being VSAT stations and stations with limited capacity where bandwidth is in the process of being upgraded, it has been decided that till 31.03.2018, such stations, in accordance with target stipulated in Central Action Plan for financial year 2017-18, may undertake and complete only ten percent scrutiny cases (which are getting barred by limitation on 31.12.2018) having the potential to effect recovery during the current year itself. The list of such stations shall be specified by the Pr. DGIT(Systems). Accordingly, at these stations, till 31.03.2018, the assessment proceedings in cases to be completed as per Central Action Plan target, may be conducted manually if e-assessment is not possible. It is reiterated that at other stations covered under para 2 above, subject to exceptions mentioned therein, the assessments would be conducted electronically only.

4. Some of the important procedural aspects while conducting assessment proceedings through 'E-Proceeding' are as under:

4.1 Enquiry before assessment in electronic mode: For enquiries before assessment in terms of section 142(1)(ii) of the Act, notice shall be issued electronically and delivered upon the assessee in his 'E-Filing' account. While filing the response electronically in compliance with notice under section 142(1)(ii) of the Act, the concerned assessee shall verify it in the manner prescribed under Rule 14 of Income-tax Rules, 1962.

4.2 Use of digital signature by Assessing Officer: All departmental orders/communications /notices being issued to the assessee through the 'e-Proceeding' facility are to be signed digitally by the Assessing Officer.

4.3 Time for compliance: Online submissions may be filed till the office hours on the date stipulated for compliance.

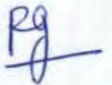
4.4 Availability of facility for electronic submission of documents in time barring situation or where case has been finally heard by the Assessing Officer: The facility for electronic submission of documents through 'E-Proceeding' shall be automatically closed seven days before the time barring date. In other situations, upon completion of proceedings, before passing the final order, concerned Assessing Officer, on his volition, shall close the e-submission facility after mentioning in electronic order sheet that 'hearing has been concluded'. However, if required, in exceptional circumstances, the concerned Assessing Officer may enable further filing of submissions electronically under intimation to the Range Head in ITBA.

4.5 In assessment proceedings being carried out through the 'E-Proceeding' facility, a particular proceeding may take place manually in following situation(s):

- i. where manual books of accounts or original documents have to be examined;
- ii. where Assessing Officer invokes provisions of section 131 of the Act or a notice is issued for carrying out third party enquiries/investigations;
- iii. where examination of witness is required to be made by the concerned assessee or the Department;
- iv. where a show-cause notice contemplating any adverse view is issued by the Assessing Officer and assessee requests for personal hearing to explain the matter.

4.6 Maintenance of 'Record' in the context of 'E-Proceeding': In cases being assessed through 'E-Proceeding', from now on, as far as possible, case-records as well as note sheet of proceedings shall be maintained electronically.

5. This instruction may be brought to the notice of all concerned for immediate compliance.
6. Hindi version to follow.



(Rohit Garg)

Director (ITA.II), CBDT

(F.No. 225/1572017-ITA.II)

Copy to:-

1. PS to FM/OSD to FM/PS to MoS(F)/OSD to MoS(F)
2. PS to Secretary (Revenue)
3. Chairman, CBDT & All Members, CBDT
4. All Pr.CCsIT/ Pr.DsGIT
5. ITCC Section
6. O/o Pr. DGIT(Systems) for uploading on official website
7. Addl. CIT (Database Cell) for uploading on departmental website



(Rohit Garg)

Director (ITA.II), CBDT