



07.09.2020

The Chairman  
Central Board of Direct Taxes,  
New Delhi – 110001

Respected Sir,

Subject: Request for making necessary legislative and procedural amendments in the Income-tax Act, 1961 to ensure transparency in claim of Tax Deducted at Source (TDS) and to reduce hardships to the tax payers

1. We wish to draw your kind attention towards hardships caused to the assessee in situations where TDS deducted by the deductor appears in Form 26AS of the deductee in one financial year whereas the income earned against the same is offered for taxation by the deductee in a different financial year.
2. In a situation where tax is deducted in an earlier financial year and the gross receipt which is subject to tax deduction is offered for tax in a subsequent financial year, there is a mechanism in the return of income to demonstrate the amount of TDS carried forward to the subsequent financial year. This TDS is then claimed in the subsequent financial year in which the gross receipt which is subject to tax deduction has been offered for tax.

However, in a reverse situation i.e. when gross receipt which is subject to tax deduction is offered for tax in an earlier financial year but tax is deducted on the same in a subsequent financial year, there is no mechanism to disclose this fact in the return of income as well as to claim TDS in such subsequent year even though the gross receipts which is subject to TDS has already been offered for taxation in an earlier financial year.

3. Such a problem arises in several situations, an illustrative list of which are enumerated below:
  - (a) Section 14 of the Income-tax Act, 1961 provides for 5 heads of income and for every head of income there is method prescribed as to how and when its income shall be charged to income tax. Similarly, there are corresponding sections of tax



deduction at source which provides for time and manner of deduction of tax at source which can be tabulated as under:

| Sl. No. | Head of Income   | Corresponding TDS provision  |
|---------|--|--|
| 1.      | Salary: Section 15 provides for charging of salary when <b>due whether paid or not</b> (clause (a)); or any salary paid or allowed to him whether due or not (clause (b)); any arrears of salary paid or allowed | Section 192 requires deduction of tax at source <b>at the time of payment.</b>   |
| 2.      | Income from House Property: Section 22 requires charging of property on the basis of ' <b>annual value</b> '   | Section 194I requires deduction of tax at source <b>at the time of credit to the account of payee or at the time of payment.</b>   |
| 3.      | Profits and Gains of Business or Profession and Income from other sources: Section 145 requires computation of income in accordance with either 'cash' or 'mercantile' system of accounting.                     | 193 - Interest on Securities, 194A- Interest other than interest on securities, 194C - Payment to contractors; 194D - Insurance Commission; 194G - Commission etc. on the sale of lottery tickets; 194H - Commission or brokerage; 194-I - Rent of machinery etc.; 194J - Fees for professional or technical services;<br>In all these sections, tax is required to be deducted at the time of credit to the account of payee or at the time of payment. |

(b) In cases where tax is deducted by Government departments, the deduction is made at the time of payment as they are not required to make any entry of credit to the account of payee. Consequently, TDS is reflected in Form 26AS of the deductee in the year in which tax has been deducted.

(c) Similarly, the persons carrying on business following 'cash system' of accounting also does not pass any entry of credit and make deduction only at the time of payment. This can be further explained by way of following example:



An assessee who is earning rental income from property let out to a government department at monthly rent of ₹ 1.00 lacs. During the financial year 2019-20 he received the rent of say ₹ 6.00 lacs only for 6 months. Accordingly, in his 26AS for financial year 2019-20, only 6.00 lacs will appear while he will be required to return income of ₹ 12.00 lacs on annual value basis. In the financial year 2020-21, if he receives full rent of ₹ 18 lacs i.e. 12 lacs of Financial Year 2020-21 and 6 lacs of Financial year 2019-20, Form 26AS of the assessee will be showing ₹ 18 lacs but his returned income will be only 12 lacs.

- (d) Similarly, in current Corona pandemic times, in case of many salaried employees, their salaries of current year (F.Y. 2020-21) although due in current year, are not paid either completely or partially in current year. However, the same is subject to tax in the hands of employees under section 15 of the Act on due basis in current year. However, TDS on the same might be withheld by employers on actual payment basis in the subsequent year. Therefore, this would result in a situation where the tax incidence on the salary income would be in one year while the corresponding actual tax deduction would be reflected in Form 26AS of a different year.
- (e) Such anomalies do arise when the deductor makes deduction based on actual payment in subsequent year and the assessee has returned its income on 'accrual' basis or as required by law.
4. In order to mitigate the hardships to the assesseees in such situations particularly under the new regime of "Faceless Assessments", we have to make following suggestions which would go a long way in rectifying this problem:
- (a) In schedule of TDS in the Return of Income, there should be a column for demonstrating 'Financial Year' alongwith 'Corresponding Receipt offered' where the financial year in which such receipt has been offered for taxation should be mentioned.
- (b) The assessee should be allowed to claim TDS in the subsequent year even though the receipt against which the tax is deducted has been offered for taxation in an earlier year since the tax has already paid by the assessee in the year to which the income pertains.



- (c) Make necessary changes in the IT system to allow taxpayers to validate the instances of shortfall in income as entered in return of income as compared to the 26AS. This will not only help tax payers but would also do away with the necessity of sending unwarranted notices to assesses.
5. We also wish to place on record the efforts of tax professionals, assessees and the tax authorities in attending matters arising out of this void which is created due to difference in incidence of tax on income and the point at which the same is subject of withholding provision. We are confident that your kind attention to this will lead to better use of national resources.
  6. We request your goodself to consider our suggestions in the interest of a large number of tax payers so that they do not face any problem in 'faceless assessment' else, there will be large number of cases where figures in Form 26AS will not match with the return of income filed by the assessee as they would have already been shown in earlier years.
  7. We sincerely hope that your goodself would appreciate that, on implementation of above suggestions, the efforts being currently deployed for triggering income shortfall notices to taxpayers can be obliterated by the department and therefore can bring more efficiency in its operations. Also, it would make a lot of difference to the assessees as they would not be put to undue hardship of responding to such unwarranted notices.

Thanking you,

Yours sincerely,

Anshul Agarwal  
President,  
**Lucknow Chartered Accountants' Society**

Suhas Paranjpe  
President  
**Bombay Chartered Accountants' Society**



Ketan Mistry  
President,  
Chartered Accountants Association, Ahmedabad

Rasesh Shah  
President,  
Chartered Accountants Association, Surat

Kumar S. Jigajinni  
President,  
Karnataka State Chartered Accountants Association

**CC to:**

1. Smt. Nirmala Sitharaman – Union Finance Minister.
2. Shri Anurag Thakur - MOS, Finance,
3. Shri Kamlesh Varshney - Joint Secretary, TPL