

F.No.142/11/2016-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)

Dated: 12th September, 2016

Clarifications on the Direct Tax Dispute Resolution Scheme, 2016

The Direct Tax Dispute Resolution Scheme, 2016 (hereinafter referred to as '**the Scheme**') incorporated as Chapter X of the Finance Act, 2016 (hereinafter referred to as '**the Act**') provides an opportunity to tax payers who are under litigation to come forward and settle the dispute in accordance with the provisions of the Scheme. The Direct Tax Dispute Resolution Scheme Rules, 2016 (hereinafter referred to as '**the Rules**') have been notified. In regard to the scheme queries have been received from the stakeholders seeking further clarity on certain provisions of the Scheme. The Central Government has considered the queries and decided to clarify the same in the form of questions and answers as follows.-

Question No.1: *In a case an appeal was pending before CIT(Appeals) as on 29.02.2016. However, before making declaration under the Scheme the appeal is disposed of by CIT(Appeals). Is the assessee eligible to avail the Scheme?*

Answer: In such a case where the appeal was pending before CIT(Appeals) as on 29.02.2016 and the CIT(Appeals) has already disposed of the same before making the declaration, the declaration under the Scheme cannot be filed.

Question No.2: *In a case where the appellant has filed a declaration under the Scheme or has intimated the CIT(Appeals) his intention to file declaration under the Scheme, whether the CIT(Appeals) will dispose-off the appeal?*

Answer: The CIT(Appeals) have been instructed vide letter F.No.279/Misc./M-30/2016 dated 30.3.2016 that appeals where the appellants have expressed their intention to avail the Scheme should be kept pending. Further, vide letter F.No.279/Misc./M-74/2016-ITJ dated 19.07.2016, the designated authority have been instructed to obtain an endorsement from CIT(Appeals) concerned that the appeal for which declaration

has been filed was pending on 29.2.2016 and has not yet been disposed. Therefore, in a case where the declaration has been made under the Scheme or an intention to avail the Scheme has been made by the appellant, the CIT(Appeals) shall not dispose the pending appeal.

Question No.3: *Appeal against quantum as well as penalty under section 271(1)(c) is pending before CIT(Appeals). If the assessee files a declaration in respect of the quantum appeal under the Scheme, what would be the fate of penalty appeal?*

Answer: As per the Scheme, in a case where disputed tax in quantum appeal is more than Rs.10 lakh, the declarant has to pay the disputed tax, interest and 25% of minimum penalty leviable. Further, in a case where the disputed tax in quantum appeal does not exceed Rs.10 lakh, the declarant is required to pay only the disputed tax & interest and there is no requirement for payment of any amount in respect of penalty leviable. Section 205(b) of the Act provides immunity from imposition or waiver of penalty under the Income-tax Act or the Wealth-tax Act in respect of tax arrear covered in the declaration to the extent the penalty exceeds the amount of penalty referred to in section 202(I) of the Act. Hence, in both the situations (i.e. whether disputed tax in quantum appeal exceeds Rs.10 lakh or not), where a valid declaration under the Scheme is made in respect of quantum appeal, the appeal against penalty levied under section 271(1)(c) of the Income-tax Act, relating to the quantum appeal pending before the Commissioner (Appeals) shall be deemed to be withdrawn and the penalty or the balance amount of penalty, as the case may be, shall be deemed to be waived.

Question No.4: *Section 203(2) reads that consequent to the declaration in respect of tax arrear, the appeal pending before Commissioner (Appeals) shall be deemed to be withdrawn. From what point of time does the provision become operative?*

Answer: The appeal pending with Commissioner (Appeals) shall be deemed to be withdrawn from the date on which the certificate under section 204(1) is issued by the designated authority.

Question No.5: *The addition made in assessment has the effect of reducing the loss but penalty has been initiated under section 271(1)(c) of the Income-tax Act. Is the assessee eligible to avail the Scheme?*

Answer: The Scheme is applicable to cases where there is disputed tax. Since in the case of reduction of loss, there is no disputed tax the assessee shall not be eligible to avail the Scheme. However, if an appeal is pending before Commissioner (Appeals) in respect of penalty order framed as a result of variation in quantum loss, the declarant may file a declaration in respect of such penalty order.

Question No.6: *In a case the time period specified under section 249 of the Income-tax Act for filing of appeal expired on 29.2.2016. The assessee filed an appeal in this case on 5.4.2016 with a request to condone the delay in filing of appeal. The Commissioner (Appeals) condoned the delay in filing of the appeal. Is the Scheme available to the assessee in such a case?*

Answer: In condonation cases, a declarant shall be eligible for the Scheme, if:

- (i) the time limit for filing of appeal under section 249 of the Income-tax Act, 1961 has got barred by limitation on or before 29.02.2016;
- (ii) the appeal and condonation application has been filed before Commissioner (Appeals) before 01.06.2016; and
- (iii) the delay in filing of such appeal is condoned by the Commissioner (Appeals)

Hence, in the present case the Scheme is available to the assessee.

Question No.7: *In a case the Commissioner (Appeals) has given a notice of enhancement. Is such a case eligible for availing the Scheme?*

Answer: A case where notice of enhancement has been received by the declarant before the date of commencement of the Scheme i.e. 01.06.2016 shall not be eligible for the Scheme.

Question No.8: *A survey was conducted during F.Y. 2013-14. Incriminating documents relating to assessment year 2011-12 were found and assessment under section 147 of the Income-tax Act for the said year was made based on these documents and other enquiries*

conducted. Is the assessee's case for A.Y. 2011-12 which is pending with Commissioner (Appeals) eligible for the Scheme?

Answer: As per section 208 of the Act, the Scheme shall not be available for assessment or reassessment on which survey conducted under section 133A of the Income-tax Act has a bearing. Hence, in the present case, A.Y. 2011-12 is not eligible for the Scheme.

Question No.9: *In a case, appeal against penalty order under section 271(1)(c) is pending before Commissioner (Appeals) and appeal against quantum addition is pending with higher appellate authority. As per the Scheme, the amount payable is 25% of the minimum penalty leviable and the tax and interest payable on the total income finally determined. What should be construed as 'total income finally determined' for computing the quantum of tax, interest and penalty payable under the Scheme? Further, what would be the effect of any variation in quantum addition as a result of appellate order(s) passed subsequent to filing of declaration?*

Answer: In case of an appeal relating to penalty under section 271(1)(c), the amount payable under the Scheme is 25% of the penalty amount and also the tax and interest payable on the total income finally determined. For this purpose the total income finally determined shall be the total income as determined after giving effect to the last appellate order passed on or before the date of filing declaration under the Scheme. Any variation to the total income as a result of any appellate order passed subsequent to the date of declaration shall be ignored for the purposes of computing the amount of penalty payable under the Scheme.

Question No.10: *Where certain income has been charged to tax in the hands of two different persons or where it has been charged to tax in the case of same person in two different assessment years, one on substantive basis and the other on the protective basis, will the declarant or the other person get advantage in respect of additions made both substantively and protectively?*

Answer: The assesseees are advised to make declarations in cases or for assessment years where the additions are made on substantive basis. The protective demand is not subjected to recovery unless

it is finally upheld. Once the declaration in a substantive case or year is accepted, the tax arrear in protective case/year would no longer be valid and will be rectified by suitable orders in the normal course.

Question No.11: *By filing declaration under the Scheme for one assessment year, does the taxpayer forego his right of appeal on the same issue in another assessment year?*

Answer: No. The order under the Scheme does not decide any judicial issue. It only determines the sum payable under the Scheme with reference to tax arrear or specified tax, as the case may be. It only provides for a dispute resolution mechanism in respect of cases for which declaration has been made.

Question No.12: *The declarant has not paid the tax payable under the Scheme within 30 days of the order under section 204(1) for any reason including the non-realisation of the cheque presented to the bank. Will the declarant be eligible for the relief under the Scheme?*

Answer: No. The tax payable under the Scheme should be paid to the credit of the Government on or before the due date as specified in the Scheme. The assesseees are advised to pay the tax well on time so as to avail the relief under the Scheme.

Question No.13: *There is no time limit specified for intimating the payments made by the declarant in accordance with the certificate issued in Form-3. Further, there is also no time limit specified for issuance of order under section 204(2) of the Act by the designated authority. Please clarify?*

Answer: The declarant shall intimate the fact of payment along with the proof of the same to the designated authority within one month from the date on which time limit for making payment under the Scheme expires. The designated authority shall issue the order under section 204(2) of the Act within one month from the end of the month in which intimation regarding payment is received in Form-4 from the declarant.

Question No.14: *Whether refund will be granted in cases where the assessee has already paid the penalty amount in full or in part while the*

appeal is still pending at CIT(A) stage and the assessee opts for this Scheme?

Answer: As per section 202(I)(b) of the Scheme, in case of pending appeal related to penalty, 25% of the minimum penalty leviable alongwith tax and interest on the total income finally determined is required to be paid. Therefore, if an assessee who has already paid an amount over and above the amounts referred to in section 202(I)(b) opts for the Scheme, he shall be eligible for refund of the excess payment already made. However, the declarant shall not be eligible for claim of interest on such refund under section 244A of the Income-tax Act, 1961.

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