

Circular

F.No.282/227/2016-IT (Inv.V) 26/2016

Government of India

Ministry of Finance

Department of Revenue Central Board of Direct Taxes

(Investigation Division)

September 21, 2016

Order under section 119 of the Income-tax Act, 1961

Circular No. 17 of 2016 dated 20.05.2016 relating to the Income Declaration Scheme, 2016 (the Scheme) clarifies that a person shall be eligible to make declaration under the Scheme for assessment years other than the assessment year(s) for which a notice under section 142(1)/143(2)/148 of the Income-tax Act, 1961 (the Act) has been served on or before 31.05.2016.

In this context, concerns have been raised that if declaration under the Scheme is made for years not under assessment on an identical issue which is pending assessment under section 143(3)/147 of the Act, then, whether such declaration shall tantamount to acceptance by the assessee of concealment of income on the said issue for the year under assessment. Doubts have also been raised that declaration under the Scheme on an identical issue in other years may lead to levy of penalty and initiation of prosecution for the year in which assessment is pending.

In this regard, attention of all concerned is invited to the provisions of section 273A of the Act which provides for power to reduce or waive penalty in certain cases. Attention is also invited to the provisions of section 279(1A) of the Act which provides that a person shall not be proceeded against for an offence under section 276C or section 277 in relation to the assessment for an assessment year in respect of which the penalty imposed or imposable under section 271(1)(iii) or 270A has been reduced or waived by an order under section 273A.

Section 273A inter-alia provides that the Principal Commissioner or Commissioner shall reduce or waive penalty in case the assessee has co-operated in any enquiry relating to the assessment of his income for the relevant assessment year and has either paid or made satisfactory arrangements for the payment of any tax or interest payable in consequence to the assessment order passed under the Act in respect of the relevant assessment year. It is clarified that where a declaration is made under the Scheme for years not under assessment on an identical issue which is pending assessment under section 143(3)/147 of the Act and the person offers to pay the tax and interest, if any, on such issue for the year pending assessment under section 143(3)/147 of the Act, the person shall be treated as having "co-operate in any enquiry" within the meaning of section 273A of the Act. Therefore, the Principal Commissioners or Commissioners are advised to take a lenient view on receipt of a

valid application under section 273A of the Act in respect of an issue for the said assessment year which is identical to the issue on which a valid declaration has been made under the Scheme for other assessment year(s) subject to payment of the entire amount payable under the Scheme.

(Mamta Bansal)

Director (Inv.V)