

Instruction No. 03 /2013

F.No. 225/76/2013/ITA.II
 Government of India
 Ministry of Finance
 Department of Revenue
 Central Board of Direct Taxes

Dated the 5th of July, 2013

To

All Chief-Commissioners of Income-tax
 All Director-Generals of Income-tax

Madam/Sir,

Subject: Procedure of be followed in receipt and disposal of rectification applications filed under section 154 of the Income-tax Act- 1961-regarding:-

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 14.03.2013 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: Para 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 Income-tax Act-1961:

A.1. Offices where Aayakar Seva Kendra is centralized Dak receipt centre:

- i) All offices where Aayakar Seva Kendra ('ASK') is functional, it would be ensured that 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 u/s 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 u/s 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 u/s 154 should be received, diarized and acknowledgment 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 u/s 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 u/s 154 must invariably be entered in "Online Rectification Register" in appropriate column.

C. Disposal of applications under section 154 of 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 fulfill 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.



(Rohit Garg)

Deputy Secretary to the Government of India
IT (A-II), CBDT

Copy to:

1. The Chairperson, CBDT, All Members of CBDT and all other officers in CBDT of the rank of Under Secretary and above.
2. DIT (PR, PP & OL), Mayur Bhavan, New Delhi for printing in the quarterly Tax Bulletin and for circulation as per usual mailing list.
3. The Comptroller and Auditor-General of India
4. The DGIT (Vigilance), New Delhi
5. The Joint Secretary & Legal Advisor, Ministry of Law & Justice, New Delhi
6. All Directors of Income tax, New Delhi
7. The DGIT (NADT), Nagpur
8. ITCC (3 Copies)
9. The DGIT (Systems), New Delhi



(Rohit Garg)

Deputy Secretary to the Government of India
IT (A-II), CBDT

Instruction No. 04/2013

F.No. 225/76/2013/ITA.II
Government of India
Ministry of Finance,
Department of Revenue (CBDT)

New Delhi, the 5th of July, 2013

To

All Chief-Commissioners of Income-tax
All Directors General of Income-tax

Sir/Madam,

Subject: Identification of Unserved intimations under section 143(1) of Income-tax Act for cases processed prior to 31.03.2010-Reg.

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 14.03.2013 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 31.03.2010.

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 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 on 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 31.03.2010 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 u/s 143(1) and disposal of applications u/s 154 and also passing of order u/s 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.

Rg

(Rohit Garg)

Deputy Secretary to Government of India
IT (A.II), CBDT

Copy to:

- (1) Chairperson, CBDT
- (2) All Members, CBDT with the request to kindly instruct the respective CCIT/DGIT under their Zonal jurisdiction that the directions of the Court as mentioned above are complied with by the afore-said time limit.
- (3) All other Officers of CBDT of the rank of Under-Secretary and above
- (4) DIT(PR,PP & DL), Mayur Bhawan, N.Delhi for printing in the quarterly tax bulletin and for circulation as per usual mailing list
- (5) The Comptroller and Auditor-General of India
- (6) The DGIT(Vigilance), N.Delhi
- (7) The Joint-Secretary and Legal Advisor, Ministry of Law and Justice, N.Delhi
- (8) All Directors of Income-tax, N.Delhi
- (9) The DGIT(NADT), Nagpur
- (10) ITCC Division of CBDT (3 copies)
- (11) The DGIT(Systems), N.Delhi

Rg

(Rohit Garg)

Deputy-Secretary to Government of India
IT (A.II), CBDT