

**SECTION 143 OF THE INCOME-TAX ACT, 1961 - ASSESSMENT - GENERAL  
- IDENTIFICATION OF UNSERVED INTIMATION UNDER SECTION 143(1)  
FOR CASES PROCESSED PRIOR TO 31-3-2010**

**INSTRUCTION NO.4/2013 [F.NO.225/76/2013/ITAT.II], DATED 5-7-2013**

Hon'ble Delhi High Court vide judgment in case of Court On its Own Motion vs. UOI and j 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 refspect 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 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 unorder under Section 143(1), Therefore, (fan assessee does not receive or is not communicated on order under Section 143(1). he will never know chat 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 ore 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 TVS 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 245r 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.