

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 an 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