

NANGIA LITIGATION UPDATE

- A. Prosecution procedure streamlined
- B. Compounding conditions relaxed
- C. E-assessment scheme launched

September, 2019

A. Prosecution procedure streamlined

CBDT has issued guidelines for streamlining the prosecution procedure for identifying and examining the cases for initiating prosecution for offences under Income-Tax Act 1961 ('the Act'). The Circular provides for two-layer procedure in the following categories of offences:

1. Failure to pay TDS / TCS to the credit of the Government – Section 276B and 276BB of the Act

Prosecution proceedings shall not ordinarily be initiated in cases where following cumulative conditions are met:

default in payment of tax deducted at source, tax collected at source or tax on distributed profits of domestic companies does not exceed INR2.5M and

the delay in deposit is less than 60 days from the due date.

However, in exceptional cases such as habitual defaulters, based on facts and circumstances of each case, prosecution may be initiated even in such cases but only with the prior approval of the collegium of approving authority.

2. Wilful attempt to evade tax etc. – Section 276C(1) of the Act

Except with the prior approval of collegium of the approving authority, prosecution proceeding shall not be initiated where the amount sought to be evaded or tax on under-reported income does not exceed INR2.5M. Further, prosecution under this provision shall be launched only after the confirmation of the order imposing penalty by the Income Tax Appellate Tribunal.

3. Failure to furnish returns of income – Section 276CC of the Act

Except with the prior approval of the approving authority, prosecution proceeding shall not be initiated where the amount of tax which would have been evaded if the failure had not been discovered does not exceed INR2.5M.

This circular shall ensure that only deserving cases are covered under prosecution whereas genuine and bonafide cases are excluded from getting prosecuted, by prescribing the two-layer approach of verification of offences by sanctioning authority and collegium of approving authority. It is pertinent to note that the Circular shall come into effect from 9 September 2019 and shall apply to all pending cases where complaint is yet to be filed.

B. Compounding Conditions Relaxed

CBDT, as a one-time measure, in relation to past offences, has relaxed the condition of filing of compounding application within 12 months in a case where compounding application has to be filled before the Competent Authority on or before 31 December 2019.

The Circular allows filing of compounding application with relaxed time limit in all cases where:

- P**rosecution proceedings are pending before any court of law for more than 12 months; or
- C**ompounding application filed was withdrawn by the applicant solely for the reason that such application was filed beyond 12 months; or
- T**here was rejection of compounding application for an offence on account of technical reasons.

Compounding Applications filed on or before 31 December 2019 pursuant to this Circular, shall not be subjected to enhanced compounding charges of 1.25 times of the normal compounding charges. However, this relaxation shall not be available in respect of offences which are not compoundable under the Current Guidelines. Also, other provisions under the Current guidelines with respect to compounding procedure, compounding charges etc. shall continue to apply to such applications.

Taxpayers who have missed an opportunity for compounding offences by approaching relevant Competent authority in past can use this window. This circular shall mitigate the hardship caused to the taxpayers in deserving cases and reduce the pendency of existing prosecution cases before the courts. This circular depicts the intention of the present Government of India to reduce hardship and litigation.

Nangia's
Take

C. E-assessment Scheme, 2019 - Another step towards digital India

Background

In order to bring transparency in the scrutiny assessment procedures and provide a hassle-free tax environment to the taxpayers, the government has the e-assessment scheme, 2019 ("scheme"), which shall come into force from September 12, 2019. The proposed scheme encompasses multiple bodies such as national e-assessment centres along with regional centres, assessment units, verification unit, technical unit and review units set up to facilitate e-assessments that could make the scheme and procedures complicated for a common taxpayer to understand.

E-assessment Scheme, 2019

Under the proposed scheme, national e-assessment Centre ("Centre") has been set up with certain nodal units such as regional e-assessment centres, assessment units, verification units, technical units and review units have been set up in order to facilitate the conduct of e-assessment proceedings. Moreover, all the communications among the nodal units shall be carried out through the national e-assessment Centre via electronic mode **only**.

Step-wise Assessment Procedure

1. The Centre shall serve a notice on the assessee, specifying the issue for selection of his case for assessment. The assessee may file his response to the Centre within 15 days from the date of the date of receipt of said notice
2. Thereafter, the Centre shall assign the selected case for e-assessment purposes to a specific assessment unit in any one regional e-assessment Centre through an automated allocation system
3. However, in case any information from assessee or any other person is sought by the assessment unit or if it requires any technical or other assistance, it shall be initiated through the Centre wherein the Centre shall issue appropriate notice to assessee or any other person for obtaining the information or other evidence sought by the assessment unit. As regards technical or other assistance, a verification and technical unit shall be assigned by the Centre through "automated allocation system"
4. After due consideration of the relevant facts and findings so obtained by the assessment unit, it shall issue, along with the details of the penalty proceedings to be initiated therein, a draft assessment order (after either accepting the assessee's returned income or making necessary modifications) to the Centre

5. Upon receipt of the draft assessment order, the Centre shall either:
 - Finalize the assessment as per draft assessment order and serve a copy thereof and penalty notice, to the assessee, along with demand notice; or
 - Serve a show cause notice providing an opportunity to the assessee as to why the assessment should not be completed as per the draft assessment order; or
 - Assign the draft assessment order to a review unit. The review unit might concur with the draft assessment order or suggest necessary modifications and revert to the Centre
6. Upon receipt of concurrence of the review unit, the Centre shall follow the steps laid down in (a) and (b) of step 5.
7. Upon receipt of suggestions for modifications from review unit, the Centre shall communicate the same to the assessment unit, which shall issue a revised assessment order to the Centre upon consideration of review unit's suggestions
8. In case a show cause notice has been served upon the assessee, the response so submitted by the assessee (within the time specified in the notice) shall be forwarded by the Centre to the assessment unit
9. The assessment unit shall, after considering such response, issue a revised assessment order to the Centre
10. Upon receipt of the revised assessment order, the Centre shall:
 - Finalize the assessment as per step 5(a), provided that no modification prejudicial to the interest of the assessee is proposed
 - Provide an opportunity to the assessee as laid in step 5(b), if a modification prejudicial to the interest of the assessee is proposed
 - The response furnished by the assessee shall be dealt with by forwarding the response to the assessment unit and obtaining a revised assessment order
11. After completion of assessment, all the electronic records of the case shall be transferred to the Assessing Officer having jurisdiction over such case, for imposition of penalty, collection and recovery of demand, rectification of mistake, giving effect to appellate orders etc.

Important Note - The Centre may at any point of assessment transfer the case to the Assessing Officer having jurisdiction over such case.

Penalty proceedings for non-compliance

1. Any unit, during the course of assessment proceedings, can recommend the penalty, to be levied on the assessee or any other person for non-compliance of any notice, direction or any other order, to the Centre and the Centre in turn shall serve a show cause notice upon the assessee or any other person as to why the penalty should not be imposed.
2. The concerned unit may make the draft order of penalty or drop the penalty, citing reasons for the same and shall forward same to the Centre, upon due consideration of the response to show cause notice furnished by the assessee or any other person and forwarded by the Centre to the concerned unit.
3. The Centre shall levy the penalty as per the said draft order and serve a copy of the order to assessee or any other person, as the case may be.

No personal appearance in centres or units

Catering to the initiative of “faceless and nameless assessment”, the government has emphasized that a person shall not be required to be personally present in relation to any proceeding under this scheme. However, the assessee shall be entitled to seek personal hearing and same shall be initiated through video conferencing, involving the use of any telecommunication application software.

Furthermore, the board shall establish suitable facilities for video conferencing at necessary locations in order to curb the hardships to assessee regarding non-availability of access to video conferencing in his area.

Nangia's Take

The government strictly going by its promise of “faceless and nameless assessment” and minimization of hardships to the assessee in paying repeated visits to the income tax department has introduced a tech-oriented taxpayer friendly scheme. Establishment of various units such as national e-assessment centres, regional centres and assessment units, verification units, technical units and review units is aimed at reducing the ambiguity and to ensure timely completion of assessments. This shall also ensure transparency in carrying out assessments as all the communications, inclusive of orders and notices are carried out through the national e-assessment centres.

Furthermore, authenticity of documents has been given precedence through introduction of digital signature mechanism and electronic authentication technique. In order to provide hassle-free tax assessment procedure to the assessee, personal appearance before the authorities has been replaced with exclusive electronic communication. However, it is imperative to note that since all the communication with the tax authorities is via electronic mode, it is of paramount importance that the submissions filed are drafted with caution and complete facts are presented in the most appropriate manner. Implementation of the e-assessment scheme may initially for a period of 6-12 months pose challenges for the taxpayer at large.

About Us

Nangia & Co LLP is a premier professional services organization offering a diverse range of Taxation, Transaction Advisory and Business Consulting services. Nangia & Co LLP has presence currently in Noida, Delhi, Gurugram, Mumbai, Dehradun, Bengaluru, Chennai and Pune. Nangia & Co LLP has been in existence for more than 38 years and has been consistently rated as one of the best advisory firms in India for entry strategy, taxation, accounting & compliances over the past many years.

Quality of our people is the cornerstone of our ability to serve our clients. For this reason, we invest tremendous resources in identifying exceptional people, developing their skills, and creating an environment that fosters their growth as leaders. From our newest staff members through senior partners, exceptional client service represents a dedication to going above and beyond expectations in every working relationship.

We strive to develop a detailed understanding of our clients' business and industry sector to offer insights on market developments and assist our clients develop effective strategies and business models. We have the resources and experience necessary to anticipate and competently serve our clients on issues pertaining to all facets of Tax and Transaction Advisory. We take pride in our ability to provide definite advice to our clients with the shortest turnaround time. The business and tax landscapes have changed dramatically, and the pace and complexity of change continues to increase. We can assist you navigate this shifting landscape.

Our Offices

NOIDA

A-109, Sector-136,
Noida (Delhi-
NCR) 201304,
INDIA
T : +91 120 2598000

DELHI

B-27, Soami
Nagar, New Delhi
110017, INDIA
T: +91 120 2598000

GURUGRAM

812-814, Tower B, Emaar
Digital Greens Sector 61,
Gurugram,
Haryana- 122102
T: +0124-4301551/1552/1554

MUMBAI

11th Floor, B Wing, Peninsula
Business Park, Ganpatrao
Kadam Marg, Lower Parel,
Mumbai – 400 013. INDIA
T: +91 22 61737000

DEHRADUN

First Floor, "IDA"
46 E. C. Road,
Dehradun – 248001,
Uttarakhand, INDIA
T: +91 135 271 6300/301
/302/303

BENGALURU

Embassy Square, # 29,
306, 3rd Floor, 148
Infantry Road, Bangalore
– 560001

PUNE

Office number 3, 1st floor,
Aditya, Centeegra, Fergusson
College Road, Next to Mantri
House, Pune - 411004

CHENNAI

Suite 118, 31-A, Cathedral
Garden Road, Nungambakkam,
Chennai-600034
T: +91-44-40509200